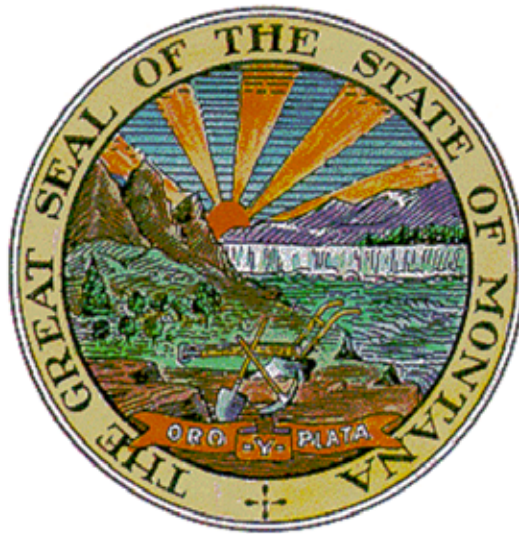


State of Montana  
Department of Labor and Industry  
Business Standards Division

## DEPARTMENT AND BOARD STATUTES RELATING TO THE PRACTICE OF CHIROPRACTIC



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UPDATED 2007

**MONTANA CODE ANNOTATED  
2007**

**TITLE 2  
GOVERNMENT STRUCTURE & ADMINISTRATION**

**CHAPTER 15  
EXECUTIVE BRANCH OFFICERS AND AGENCIES**

**Part 17 – Department of Labor & Industry**

**2-15-1737. Board of chiropractors.** (1) There is a board of chiropractors.

(2) The board consists of four members appointed by the governor with the consent of the senate. Three members must be practicing chiropractors of integrity and ability who are residents of this state and who have practiced chiropractic continuously in this state for at least 1 year. No two members may be graduates of the same school or college of chiropractic. One member must be a representative of the public who is not engaged in the practice of chiropractic.

(3) Each member shall serve for a term of 3 years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

**History:** (1) thru (3)En. I.M., Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3138, R.C.M. 1921; re-en. Sec. 3138, R.C.M. 1935; Sec. 66-501, R.C.M. 1947; amd. and redes. 82A-1602.7 by Sec. 45, Ch. 350, L. 1974; amd. Sec. 2, Ch. 579, L. 1977; Sec. 82A-1602.7, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.7; amd. Sec. 3, Ch. 155, L. 1981; amd. Sec. 9, Ch. 247, L. 1981; MCA 1979, 2-15-1613; redes. 2-15-1847 by Sec. 4, Ch. 274, L. 1981; Sec. 2-15-1847, MCA 1999; redes. 2-15-1737 by Sec. 221(2), Ch. 483, L. 2001.

**Cross-References**

Application of Montana Administrative Procedure Act to licensing, 2-4-631.  
Disasters and emergencies -- emergency reciprocity for persons licensed out of state, 10-3-204.  
General duties of boards, 37-1-131.  
Licensure of former criminal offenders, Title 37, ch. 1, part 2.  
General provisions relating to health care practitioners, Title 37, ch. 2.  
Chiropractic, Title 37, ch. 12.  
Nondiscrimination in licensing, 49-3-204.

**TITLE 27**  
**CIVIL LIABILITY,  
REMEDIES, AND LIMITATIONS**  
**CHAPTER 12**  
**MONTANA CHIROPRACTIC  
LEGAL PANEL ACT**

**Part 1 -- General Provisions**

- 27-12-101. Short title.
- 27-12-102. Purpose.
- 27-12-103. Definitions.
- 27-12-104. Creation of panel.
- 27-12-105. What claims panel to review.
- 27-12-106. Immunity of panel members and witnesses from civil liability.

**Part 2 -- Administration of Act**

- 27-12-201. Appointment, term, and salary of director.
- 27-12-202. Employment of staff and maintenance of offices.
- 27-12-203. Compensation of panel members and staff.
- 27-12-204. Authority to adopt rules.
- 27-12-205. Powers of panel.
- 27-12-206. Funding.
- 27-12-207. Panel audits.

**Part 3 -- Preliminary Procedure**

- 27-12-301. How cases submitted -- no court action before application.
- 27-12-302. Content of application -- waiver of confidentiality of medical records.
- 27-12-303. Amendments to application.
- 27-12-304. Copies of application to professional societies when vicarious liability claimed.
- 27-12-305. Service on chiropractic physician.
- 27-12-306. Chiropractic physician's appearance and answer -- waiver of confidentiality of records.
- 27-12-307. Assistance to claimant in obtaining expert consultation.
- 27-12-308. Director to furnish panel members with documents.

**Part 4 -- Formation and Composition of Panel**

- 27-12-401. Composition of panel.
- 27-12-402. Selection of panelists.
- 27-12-403. Panel in cases involving multiple defendants.

27-12-404. Disqualification of panel member.

### **Part 5 -- Hearing Procedure**

27-12-501. Time and place of hearing.

27-12-502. Conduct of hearing.

27-12-503. Conclusion of hearing -- supplemental hearing.

### **Part 6 -- Deliberations and Decision of Panel**

27-12-601. Selection of chairman.

27-12-602. Questions panel must decide.

27-12-603. Deliberations to be secret -- voting.

27-12-604. Form and content of decision.

27-12-605. Decision to be filed and copies sent to parties, attorneys, and licensing board.

27-12-606. Decision not binding -- settlement agreements.

### **Part 7 -- Effect of Proceedings in Court Action--Confidentiality**

27-12-701. Tolling of statute of limitations.

27-12-702. Records of proceedings -- confidentiality.

27-12-703. Panel proceedings and decision privileged from disclosure in court actions.

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**Part 1**

### **General Provisions**

**27-12-101. Short title.** This chapter may be cited as the "Montana Chiropractic Legal Panel Act".

**History:** En. Sec. 1, Ch. 262, L. 1989.

**27-12-102. Purpose.** The purpose of this chapter is to:

(1) prevent, whenever possible, filed court actions against chiropractic physicians and their employees for professional liability in situations in which the facts do not permit at least a reasonable inference of malpractice; and

(2) make possible the fair and equitable disposition of such claims against chiropractic physicians as are or reasonably may be well founded.

**History:** En. Sec. 2, Ch. 262, L. 1989.

**27-12-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Chiropractic physician" means:

(a) for purposes of the annual assessment under 27-12-206, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the assessment:

(i) has his principal residence or place of chiropractic practice in the state of

Montana;

(ii) is not employed full time by any federal agency or entity; and

(iii) is not fully retired from the practice of chiropractic; or

(b) for all other purposes, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the occurrence of the incident giving rise to a malpractice claim:

(i) had his principal residence or place of chiropractic practice in the state of Montana and was not employed full time by any federal agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of a state to render chiropractic services and each of whose shareholders, partners, or owners were chiropractic physicians licensed to practice chiropractic under Title 37, chapter 12.

(2) "Director" means the director of the Montana chiropractic legal panel.

(3) "Malpractice claim" means any claim or potential claim against a chiropractic physician for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health care that proximately results in damage to the claimant, and includes but is not limited to a tort or contract claim or potential claim.

(4) "Panel" means the Montana chiropractic legal panel created in 27-12-104.

**History: En. Sec. 3, Ch. 262, L. 1989.**

#### **Cross-References**

Montana Professional Corporation Act, Title 35, ch. 4.

**27-12-104. Creation of panel.** There is a Montana chiropractic legal panel. The panel is a quasi-governmental entity and is allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply. The only state laws applicable to the panel are those contained in this chapter and those laws specifically made applicable to the panel.

**History: En. Sec. 4, Ch. 262, L. 1989; amd. Sec. 1, Ch. 175, L. 2003; amd. Sec. 1, Ch. 199, L. 2005.**

**27-12-105. What claims panel to review.** The panel shall review all malpractice claims or potential claims against chiropractic physicians covered by this chapter, except claims subject to a valid arbitration agreement allowed by law.

**History: En. Sec. 5, Ch. 262, L. 1989.**

#### **Cross-References**

Uniform Arbitration Act, Title 27, ch. 5.

**27-12-106. Immunity of panel members and witnesses from civil liability.** Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this chapter.

**History: En. Sec. 6, Ch. 262, L. 1989.**

## **Part 2**

### **Administration of Act**

**27-12-201. Appointment, term, and salary of director.** The executive director of the Montana chiropractic association shall appoint the director of the panel, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of and the director's salary must be set by the executive director of the Montana chiropractic association, subject to the approval of

the chief justice.

**History:** En. Sec. 7, Ch. 262, L. 1989.

**27-12-202. Employment of staff and maintenance of offices.** (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted.

**History:** En. Sec. 8, Ch. 262, L. 1989.

**Cross-References**

Public records, Title 2, ch. 6.

**27-12-203. Compensation of panel members and staff.** (1) Each member of the panel must be paid a salary of \$40 an hour, under guidelines promulgated by the Montana supreme court.

(2) Each member of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503. The director shall approve such expenses before payment is made.

**History:** En. Sec. 9, Ch. 262, L. 1989.

**27-12-204. Authority to adopt rules.** The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the panel. Rules may not be adopted that require a party to make a monetary payment as a condition of bringing a malpractice claim before the chiropractic review panel.

**History:** En. Sec. 10, Ch. 262, L. 1989.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**27-12-205. Powers of panel.** The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by rules adopted by the director, the issuance of subpoenas, and the performance of all other acts required to fairly and effectively administer this chapter.

**History:** En. Sec. 11, Ch. 262, L. 1989.

**27-12-206. Funding.** (1) There is a pretrial review fund to be administered by the director for the purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director. The fund may not become part of or revert to the general fund of this state but is subject to auditing by the legislative auditor. Money from the assessments levied under this section must be deposited in the fund.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year that is not required for the administration of this chapter must be retained by the director and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date that the chiropractic physician's annual renewal fee under 37-1-134 is due. An unpaid assessment bears a late charge fee of \$25. The late charge fee is part of the annual

assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of labor and industry has under 37-1-134 with regard to a chiropractic physician's annual license fee. However, nothing in this section may be interpreted to conflict with 37-1-138.

**History:** En. Sec. 12, Ch. 262, L. 1989; amd. Sec. 1, Ch. 47, L. 1993; amd. Sec. 47, Ch. 509, L. 1995; amd. Sec. 1, Ch. 5, L. 2001; amd. Sec. 61, Ch. 483, L. 2001; amd. Sec. 4, Ch. 271, L. 2003; amd. Sec. 4, Ch. 467, L. 2005.

**27-12-207. Panel audits.** (1) The panel and fund must be audited by or at the direction of the legislative auditor and in accordance with 5-13-304 and 5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual assessment.

(2) A copy of each audit report must be furnished to the supreme court.

(3) The cost of an audit must be paid by the panel.

**History:** En. Sec. 13, Ch. 262, L. 1989.

### **Part 3**

#### **Preliminary Procedure**

**27-12-301. How cases submitted -- no court action before application.** A claimant shall submit a case for the consideration of the panel before filing a complaint in a court sitting in Montana by addressing an application in writing, signed by the claimant or his attorney, to the director of the panel.

**History:** En. Sec. 14, Ch. 262, L. 1989.

#### **Cross-References**

Administration of justice, Art. II, sec. 16, Mont. Const.

Due process of law, Art. II, sec. 17, Mont. Const.

**27-12-302. Content of application -- waiver of confidentiality of medical records.** The application must contain a statement:

(1) in reasonable detail of the elements of the chiropractic physician's conduct that are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all witnesses, chiropractic and other physicians, and hospitals having contact with the claimant; and

(2) authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of the panel's consideration of the claim, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be construed as waiving any privilege for any other purpose or in any other context, in or out of court.

**History:** En. Sec. 15, Ch. 262, L. 1989.

**27-12-303. Amendments to application.** Amendments to an application may be made in the manner authorized by rule.

**History:** En. Sec. 16, Ch. 262, L. 1989.

#### **Cross-References**

Authority to adopt rules, 27-12-204.

**27-12-304. Copies of application to professional societies when vicarious liability claimed.** If an application employs a theory of respondeat superior or any other derivative theory of recovery, the director shall give a copy of

the application to the state professional society, association, or licensing board of both the individual chiropractic physician whose alleged malpractice caused the application to be filed and the chiropractic physician named a defendant as employer, master, or principal.

**History:** En. Sec. 17, Ch. 262, L. 1989.

#### **Cross-References**

Board of Chiropractors, Title 37, ch. 12, part 2.

**27-12-305. Service on chiropractic physician.** Upon receipt of an application, the director or his delegate shall serve a copy of the application on the chiropractic physician whose alleged malpractice caused the application to be filed. Service must be by mailing a certified copy of the application to the chiropractic physician at his last-known address, postage prepaid, by certified mail, return receipt requested.

**History:** En. Sec. 18, Ch. 262, L. 1989.

**27-12-306. Chiropractic physician's appearance and answer -- waiver of confidentiality of records.** (1) If a chiropractic physician whose alleged malpractice caused the application to be filed chooses to retain legal counsel, the chiropractic physician's attorney shall informally enter an appearance with the director.

(2) The chiropractic physician shall answer the application and submit a statement authorizing the panel to inspect all medical, chiropractic, and hospital records and information pertaining to the application and, for the purposes of panel inspection only, waiving any privilege as to the content of those records. Nothing in the statement waives any privilege for any other purpose.

**History:** En. Sec. 19, Ch. 262, L. 1989; amd. Sec. 2, Ch. 5, L. 2001.

#### **Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch.20).

Records of proceedings -- confidentiality, 27-12-702.

Uniform health care information, Title 50, ch. 16, part 5.

**27-12-307. Assistance to claimant in obtaining expert consultation.** The director shall cooperate fully with the claimant in retaining as an expert consultant a chiropractic physician qualified in the field of chiropractic.

**History:** En. Sec. 20, Ch. 262, L. 1989.

**27-12-308. Director to furnish panel members with documents.** At least 10 days prior to the hearing, the director shall give each panel member copies of all claims, all briefs, all chiropractic, medical, or hospital records, and all other documents that the director considers necessary.

**History:** En. Sec. 21, Ch. 262, L. 1989; amd. Sec. 3, Ch. 5, L. 2001.

## **Part 4**

### **Formation and Composition of Panel**

**27-12-401. Composition of panel.** Those eligible to sit on the panel are chiropractic physicians licensed under Montana law and residing in Montana and attorneys who are members of the state bar of Montana. Three panel members who are chiropractic physicians and three panel members who are attorneys shall sit in review of each case.



**History:** En. Sec. 22, Ch. 262, L. 1989.

**Cross-References**

Licensing of chiropractic practitioners, Title 37, ch. 12.

Licensing of attorneys, Title 37, ch. 61.

**27-12-402. Selection of panelists.** The board of chiropractors and the director of the state bar of Montana shall each annually transmit a list of licensees to the director of the panel. Within 14 days from the date of transmittal of a list, the director shall select 12 proposed panelists from the list. The director shall select three from each list to serve on the panel. The director shall notify the parties of the names of the panelists.

**History:** En. Sec. 23, Ch. 262, L. 1989; amd. Sec. 2, Ch. 199, L. 2005.

**27-12-403. Panel in cases involving multiple defendants.** If there are multiple defendants, the case against each may be reviewed by a separate panel or, at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all defendants.

**History:** En. Sec. 24, Ch. 262, L. 1989.

**27-12-404. Disqualification of panel member.** (1) A panel member or proposed member shall disqualify himself from consideration of a case in which, by virtue of his circumstances he believes his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a panel member or proposed member from serving.

(2) If a party files an affidavit stating that he believes a panel member cannot impartially sit in review of the application, that panel member is disqualified from consideration of the case. The affidavit must be filed within 15 days of the transmittal by the director, under 27-12-402, of the names of the panel members selected. A party may not disqualify more than three panel members. The entity that chose the disqualified member shall select another panel member.

**History:** En. Sec. 25, Ch. 262, L. 1989.

## **Part 5**

### **Hearing Procedure**

**Part Cross-References**

Due process of law, Art. II, sec. 17, Mont. Const.

**27-12-501. Time and place of hearing.** (1) Subject to subsection (2), the director shall choose a date, time, and place for hearing and give prompt notice thereof to the parties involved, their attorneys, and the members of the panel. The hearing date may not be more than 120 days after transmittal of the application by the director, unless the panel finds that good cause exists for extending the 120-day period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall, upon request of the director of the panel, provide suitable facilities for the hearing.

**History:** En. Sec. 26, Ch. 262, L. 1989.

**27-12-502. Conduct of hearing.** (1) At the time set for hearing, the claimant must be present and give a brief statement of the claimant's case, including

the facts constituting the alleged professional malpractice that the claimant is prepared to prove. The chiropractic physician against whom the claim is brought and the chiropractic physician's attorney may be present and may make an introductory statement of the chiropractic physician's case.

(2) A party may call witnesses to testify before the panel. Witnesses must be sworn. Medical and chiropractic texts, journals, studies, and other documentary evidence relied upon by a party may be offered and admitted if relevant. Written statements of facts by treating chiropractic physicians may be reviewed.

(3) The hearing is informal, and an official transcript may not be made.

**History:** En. Sec. 27, Ch. 262, L. 1989; amd. Sec. 4, Ch. 5, L. 2001.

**27-12-503. Conclusion of hearing -- supplemental hearing.** (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing. The supplemental hearing must be held at a date and time no more than 30 days from the date of the original hearing, unless the claimant or his attorney consents in writing to a longer period.

(2) A supplemental hearing must be held in the same manner as the original hearing, and the parties and their attorneys may be present.

**History:** En. Sec. 28, Ch. 262, L. 1989.

## **Part 6**

### **Deliberations and Decision of Panel**

**27-12-601. Selection of chairman.** At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman, who must be an attorney.

**History:** En. Sec. 29, Ch. 262, L. 1989.

**27-12-602. Questions panel must decide.** Upon consideration of all relevant evidence, the panel shall decide whether there is:

(1) substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) a reasonable medical probability that the patient was injured thereby.

**History:** En. Sec. 30, Ch. 262, L. 1989.

**27-12-603. Deliberations to be secret -- voting.** The deliberations of the panel are confidential. Each vote of the panel on a question for discussion must be by secret ballot. The decision must be by a majority vote of those voting members of the panel who sat during the case.

**History:** En. Sec. 31, Ch. 262, L. 1989.

**27-12-604. Form and content of decision.** (1) The decision must:

(a) be in writing and signed by the chairman;

(b) contain only the conclusions reached by a majority of the panel; and

(c) list the number of dissenting members, if any.

(2) The majority may briefly explain the reasoning and the basis for its decision, and the dissenters may likewise explain the reasons for disagreement.

**History:** En. Sec. 32, Ch. 262, L. 1989.

**27-12-605. Decision to be filed and copies sent to parties, attorneys,**

**and licensing board.** A copy of the decision must be:

- (1) given to the parties and their attorneys; and
- (2) retained in the permanent files of the panel.

**History:** En. Sec. 33, Ch. 262, L. 1989; amd. Sec. 3, Ch. 199, L. 2005.

**27-12-606. Decision not binding -- settlement agreements.** The panel's decision is without administrative or judicial authority and is not binding upon a party. The panel may recommend an award or approve a settlement agreement. An approved settlement agreement is binding on the parties.

**History:** En. Sec. 34, Ch. 262, L. 1989.

## **Part 7**

### **Effect of Proceedings in Court Action -- Confidentiality**

**27-12-701. Tolling of statute of limitations.** (1) Upon receipt of an application by the director, the running of an applicable limitation period in a malpractice claim is tolled as to each chiropractic physician named as a party and as to each other person or entity named as a necessary or proper party for a court action that might subsequently arise out of the factual circumstances set forth in the application.

(2) The running of the applicable limitation period in a malpractice claim does not begin again until:

(a) 30 days after an order of dismissal, with or without prejudice against refile, is issued; or

(b) after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant or his attorney.

**History:** En. Sec. 35, Ch. 262, L. 1989.

#### **Cross-References**

Statute of limitations -- medical malpractice, 27-2-205.

**27-12-702. Records of proceedings -- confidentiality.** The director shall maintain records of all proceedings before the panel. The record must include the nature of the act or omission complained of, a brief summary of the evidence, the decision of the panel, and any majority or dissenting opinions filed. Records that identify a party to the proceedings may not be made public, are not subject to subpoena, and may be used only to compile statistical data and facilitate studies of medical malpractice in Montana.

**History:** En. Sec. 36, Ch. 262, L. 1989.

#### **Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Appearance and answer -- waiver of confidentiality of records, 27-12-306.

**27-12-703. Panel proceedings and decision privileged from disclosure in court actions.** (1) A panel member must not be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) A decision of the panel is not admissible as evidence in an action subsequently brought in a court of law.

**History:** En. Sec. 37, Ch. 262, L. 1989.

**TITLE 37  
PROFESSIONS AND OCCUPATIONS**

**CHAPTER 1  
GENERAL PROVISIONS**

**Part 1 -- Duties and Authority of Department,  
Director, and Boards**

- 37-1-101. Duties of department.
- 37-1-102. Renumbered 37-1-121.
- 37-1-103. Renumbered 37-1-131.
- 37-1-104. Standardized forms.
- 37-1-105. Reporting disciplinary actions against licensees.
- 37-1-106. Biennial report.
- 37-1-107. Joint meetings -- department duties.
- 37-1-108 through 37-1-120 reserved.
- 37-1-121. Duties of commissioner.
- 37-1-122 through 37-1-129 reserved.
- 37-1-130. Definitions.
- 37-1-131. Duties of boards -- quorum required.
- 37-1-132. Nominees for appointment to licensing and regulatory boards.
- 37-1-133. Board members' compensation and expenses.
- 37-1-134. Fees commensurate with costs.
- 37-1-135. Licensing investigation and review -- record access.
- 37-1-136. Disciplinary authority of boards -- injunctions.
- 37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.
- 37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.
- 37-1-139 and 37-1-140 reserved.
- 37-1-141. License renewal -- lapse -- expiration -- termination.

**Part 2 -- Licensure of Criminal Offenders**

- 37-1-201. Purpose.
- 37-1-202. Intent and policy.
- 37-1-203. Conviction not a sole basis for denial.
- 37-1-204. Statement of reasons for denial.
- 37-1-205. Licensure on completion of supervision.

**Part 3 -- Uniform Professional Licensing  
and Regulation Procedures**

- 37-1-301. Purpose.
- 37-1-302. Definitions.
- 37-1-303. Scope.

- 37-1-304. Licensure of out-of-state applicants -- reciprocity.
- 37-1-305. Temporary practice permits.
- 37-1-306. Continuing education.
- 37-1-307. Board authority.
- 37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -  
- exceptions.
- 37-1-309. Notice -- request for hearing.
- 37-1-310. Hearing -- adjudicative procedures.
- 37-1-311. Findings of fact -- order -- report.
- 37-1-312. Sanctions -- stay -- costs -- stipulations.
- 37-1-313. Appeal.
- 37-1-314. Reinstatement.
- 37-1-315. Enforcement of fine.
- 37-1-316. Unprofessional conduct.
- 37-1-317. Practice without license -- investigation of complaint -- injunction  
-- penalties.
- 37-1-318. Violation of injunction -- penalty.
- 37-1-319. Rules.
- 37-1-320. Mental intent -- unprofessional conduct.
- 37-1-321 through 37-1-330 reserved.
- 37-1-331. Correctional health care review team.

## **Part 1**

### **Duties and Authority of Department, Director, and Boards**

#### **Part Cross-References**

- Contested cases, Title 2, ch. 4, part 6.
- Appointment and qualifications of department heads -- duties, 2-15-111, 2-15-112.
- Allocation for administrative purposes only, 2-15-121.
- Department and boards created, Title 2, ch. 15, part 18.
- Department's duties for Board of Horseracing, 23-4-103.
- Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.

**37-1-101. (Temporary) Duties of department.** In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

**37-1-101. (Effective January 1, 2009) Duties of department.** In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services

related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary;

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department.

**History:** En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005; amd. Sec. 17, Ch. 11, L. 2007; amd. Sec. 39, Ch. 44, L. 2007; amd. Sec. 1, Ch. 225, L. 2007.

#### **Compiler's Comments**

*2007 Amendments -- Composite Section:* Chapter 11 in (5) near end after "board" inserted "or a program"; in (9)(a) near beginning after "notice to the" inserted "board and to the"; inserted (9)(b) through (9)(d) outlining additional department duties regarding boards; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 44 in introductory clause after "department" deleted "of labor and industry"; and in (8) at end substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

Chapter 225 in (8) substituted "37-1-307(1)(d)" for "37-1-307(1)(e)"; inserted (12) concerning uniform rules for public notice; and made minor changes in style. Amendment effective January 1, 2009.

**37-1-102. Renumbered 37-1-121.** Code Commissioner, 1981.

**37-1-103. Renumbered 37-1-131.** Code Commissioner, 1981.

**37-1-104. Standardized forms.** The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

**History:** En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

**37-1-105. Reporting disciplinary actions against licensees.** The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

**History:** En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

**37-1-106. Biennial report.** The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

**History:** En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

**37-1-107. Joint meetings -- department duties.** (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

(a) have licensees with dual licensure in related professions or occupations;  
(b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:

- (i) health care boards;
- (ii) mental health care boards;
- (iii) design boards;
- (iv) therapeutic boards; or
- (v) technical boards; or

(c) have issues of joint concern or related jurisdiction with each other.

(2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

**History:** En. Sec. 1, Ch. 11, L. 2007.

#### **Compiler's Comments**

*Effective Date:* Section 26, Ch. 11, L. 2007, provided: "[This act] is effective July 1, 2007."

#### **37-1-108 through 37-1-120 reserved.**

**37-1-121. Duties of commissioner.** In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

**History:** En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.



**37-1-122 through 37-1-129 reserved.**

**37-1-130. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

**History:** En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005; amd. Sec. 7, Ch. 502, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 502 in definition of expired license after "period of" increased 45 days to 46 days; in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

**37-1-131. (Temporary) Duties of boards -- quorum required.** (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program

expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

**37-1-131. (Effective January 1, 2009) Duties of boards -- quorum required.** (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed

program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311.

**History:** En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005; amd. Sec. 2, Ch. 225, L. 2007; amd. Sec. 8, Ch. 502, L. 2007.

#### **Compiler's Comments**

*2007 Amendments -- Composite Section:* Chapter 225 inserted (6) concerning public notice; and made minor changes in style. Amendment effective January 1, 2009.

Chapter 502 inserted (3) requiring licensees reactivating expired licenses to prove they have met continuing education or certification requirements; in (4)(d) in first sentence after "37-1-306" inserted "or require continued state, regional, or national certification for licensure", in second sentence in two places after "education" inserted "or continued state, regional, or national certification", at beginning inserted exception clause, and after "audit or" substituted "require proof of" for "verify", and in third sentence near middle after "audits" inserted "after the lapsed date" and at end after "requirement" deleted "after the renewal period closes"; and made minor changes in style. Amendment effective October 1, 2007.

**37-1-132. Nominees for appointment to licensing and regulatory boards.** Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making

appointments to such boards.

**History:** En. Sec. 9, Ch. 244, L. 1981.

**Cross-References**

Appointing power, Art. VI, sec. 8, Mont. Const.

**37-1-133. Board members' compensation and expenses.** Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

**History:** En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

**37-1-134. Fees commensurate with costs.** Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

**History:** En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

**37-1-135. Licensing investigation and review -- record access.** Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

**History:** En. Sec. 1, Ch. 242, L. 1981.

**Cross-References**

Procurement of services, Title 18, ch. 8.

**37-1-136. (Temporary) Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

**37-1-136. (Effective January 1, 2009) Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311.

**History:** En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 3, Ch. 225, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 225 inserted (5) concerning public notice. Amendment effective January 1, 2009.

#### **Cross-References**

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.  
Contempts, Title 3, ch. 1, part 5.  
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.  
Affidavits, Title 26, ch. 1, part 10.

**37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.** (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and

industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

**History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.**

**37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.** (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license

is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

**History:** En. Sec. 2, Ch. 271, L. 2003.

**37-1-139 and 37-1-140 reserved.**

**37-1-141. License renewal -- lapse -- expiration -- termination.** (1)

The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

**History:** En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.

## **Part 2**

### **Licensure of Criminal Offenders**

#### **Part Cross-References**

Criminal justice policy -- rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling -- qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.  
Supervision of probationers and parolees, Title 46, ch. 23, part 10.

**37-1-201. Purpose.** It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.

**History:** En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001; amd. Sec. 1, Ch. 389, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 389 inserted third sentence regarding an applicant's criminal background; and made minor changes in style. Amendment effective October 1, 2007.

*Applicability:* Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

**37-1-202. Intent and policy.** It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

**History:** En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

**37-1-203. Conviction not a sole basis for denial.** Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

**History:** En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

**37-1-204. Statement of reasons for denial.** When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

**History:** En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

#### **Cross-References**

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

**37-1-205. Licensure on completion of supervision.** Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

**History:** En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.



## Part 3

### Uniform Professional Licensing and Regulation Procedures

**37-1-301. Purpose.** The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

**History:** En. Sec. 1, Ch. 429, L. 1995.

**37-1-302. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

**History:** En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005; amd. Sec. 9, Ch. 502, L. 2007.

#### Compiler's Comments

*2007 Amendment:* Chapter 502 in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

**37-1-303. Scope.** This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals.

**History:** En. Sec. 3, Ch. 429, L. 1995; amd. Sec. 40, Ch. 44, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 44 in third sentence after "specified in" substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

**37-1-304. Licensure of out-of-state applicants -- reciprocity.** (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

**History:** En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

**37-1-305. Temporary practice permits.** (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

**History:** En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

**37-1-306. Continuing education.** A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

**History:** En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

**37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)

**History:** En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005; amd. Sec. 2, Ch. 389, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 389 in (2) near middle after "information" inserted "as defined in 44-5-103" and at end after "practice" inserted "but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5"; inserted (3) allowing a board to obtain criminal history

record information; inserted (4) regarding fingerprinting, background check information, and payment of fees; and made minor changes in style. Amendment effective October 1, 2007.

*Applicability:* Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

*Contingent Termination -- Request for Federal Exemptions:* Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

- (a) [section 9] [40-5-922];
- (b) [section 11] [40-5-924];
- (c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];
- (d) [section 95] [61-5-107];
- (e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

**History:** En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

**37-1-309. Notice -- request for hearing.** (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

**History:** En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

**37-1-310. Hearing -- adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

**History:** En. Sec. 10, Ch. 429, L. 1995.

**37-1-311. (Temporary) Findings of fact -- order -- report.** (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

**37-1-311. (Effective January 1, 2009) Findings of fact -- order -- report.** (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the

required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

**History:** En. Sec. 11, Ch. 429, L. 1995; amd. Sec. 4, Ch. 225, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 225 substituted (2) concerning report of suspension for former text that read: "(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public." Amendment effective January 1, 2009.

**37-1-312. Sanctions -- stay -- costs -- stipulations.** (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

**History:** En. Sec. 12, Ch. 429, L. 1995.

**37-1-313. Appeal.** A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

**History:** En. Sec. 13, Ch. 429, L. 1995.

**37-1-314. Reinstatement.** A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an

examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

**History: En. Sec. 14, Ch. 429, L. 1995.**

**37-1-315. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

**History: En. Sec. 15, Ch. 429, L. 1995.**

**37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent,

protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

**History:** En. Sec. 16, Ch. 429, L. 1995.

**37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

**History:** En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch.



402, L. 1999.

**37-1-318. Violation of injunction -- penalty.** A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

**History:** En. Sec. 18, Ch. 429, L. 1995.

**37-1-319. Rules.** A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

**History:** En. Sec. 19, Ch. 429, L. 1995.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**37-1-320. Mental intent -- unprofessional conduct.** A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

**History:** En. Sec. 7, Ch. 492, L. 2001.

**37-1-321 through 37-1-330 reserved.**

**37-1-331. Correctional health care review team.** (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service

professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

**History: En. Sec. 2, Ch. 375, L. 1999.**

## **CHAPTER 2**

### **GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS**

#### **Part 1 -- Dispensing of Drugs**

- 37-2-101. Definitions.
- 37-2-102. Practices declared unlawful between drug companies and medical practitioners.
- 37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
- 37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.
- 37-2-105. Duty of county attorneys.
- 37-2-106. Existing ownership of pharmacy.
- 37-2-107. Civil penalty for unreadable prescription.
- 37-2-108 through 37-2-110 reserved.
- 37-2-111. Repealed.

#### **Part 2 -- Nonliability for Peer Review**

- 37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations.

#### **Part 3 -- Miscellaneous Provisions**

- 37-2-301. Duty to report cases of communicable disease.
- 37-2-302. Gunshot or stab wounds to be reported.
- 37-2-303. Immunity from liability.
- 37-2-304 through 37-2-310 reserved.
- 37-2-311. Report to department of justice by physician.
- 37-2-312. Physician's immunity from liability.
- 37-2-313 and 37-2-314 reserved.
- 37-2-315. Direct billing for anatomic pathology services.

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#### **Part 1**

#### **Dispensing of Drugs**

#### **Part Cross-References**

Pharmacy, Title 37, ch. 7.

Dangerous drugs, Title 45, ch. 9.  
Model Drug Paraphernalia Act, Title 45, ch. 10.  
Controlled substances, Title 50, ch. 32.

**37-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(3) "Drug" has the same meaning as provided in 37-7-101.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" has the same meaning as provided in 37-7-101.

(8) "State" means the state of Montana or any political subdivision of the state.

**History:** En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989; amd. Sec. 2, Ch. 388, L. 2001; amd. Sec. 17, Ch. 467, L. 2005.

**37-2-102. Practices declared unlawful between drug companies and medical practitioners.** It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

**History:** En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.

**37-2-103. Practices declared unlawful between medical practitioners and pharmacies.** (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under

37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

**History:** En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.

**37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.** (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

**History:** En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989; amd. Sec. 1, Ch. 445, L. 1991; amd. Sec. 57, Ch. 418, L. 1995; amd. Sec. 86, Ch. 546, L. 1995; amd. Sec. 1, Ch. 125, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 125 in (2)(f) near beginning substituted "contraceptives, other than mifepristone" for "oral contraceptives"; and made minor changes in style. Amendment effective October 1, 2007.

**37-2-105. Duty of county attorneys.** It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

**History:** En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

#### **Cross-References**

Duty of Attorney General to supervise County Attorneys, 2-15-501.  
Duties of County Attorneys generally, Title 7, ch. 4, part 27.  
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).  
Injunctions generally, Title 27, ch. 19.

**37-2-106. Existing ownership of pharmacy.** The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

**History:** En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

#### **Cross-References**

Store license for pharmacy, 37-7-321.

**37-2-107. Civil penalty for unreadable prescription.** (1) A medical practitioner may not issue a written prescription, to be delivered to a patient or pharmacy, in such a manner that the name of the drug, the dosage, the instructions for use, the printed name or other identifying letters or numbers unique to the medical practitioner, and, if required, the federal drug enforcement agency identifying number cannot be read by a registered pharmacist licensed to practice in this state.

(2) Any person may file a complaint alleging a violation of subsection (1) with the board that licensed the medical practitioner who issued the prescription. The board may investigate the complaint and take any action and impose any sanction allowed by the statutes relating to the board and rules adopted by the board. Each board licensing a medical practitioner shall adopt rules to implement this section.

(3) The board may refer the complaint to the county attorney of the county in which the prescription was issued, whether or not the board itself has taken any action or imposed any sanction. A county attorney may not file an action alleging a violation of subsection (1) unless a complaint has been referred to the county attorney by the medical practitioner's licensing board.

(4) A medical practitioner who violates subsection (1) is guilty of a civil offense and may be punished by a civil penalty of not more than \$500 for each prescription.

**History:** En. Sec. 1, Ch. 436, L. 2005.

**37-2-108 through 37-2-110 reserved.**

**37-2-111. Repealed.** Sec. 75, Ch. 492, L. 2001.

**History:** En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

## **Part 2**

### **Nonliability for Peer Review**

#### **Part Cross-References**

Libel and slander, Title 27, ch. 1, part 8.  
Montana Medical Legal Panel created, 27-6-104.  
Licensing investigation and review -- record access, 37-1-135.  
Reporting obligations of physicians, Title 37, ch. 3, part 4.  
Health care information, Title 50, ch. 16.

**37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations.** (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

**History:** En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

## **Part 3**

### **Miscellaneous Provisions**

#### **Part Cross-References**

Doctor-patient privilege, 26-1-805.

Libel and slander, Title 27, ch. 1, part 8.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Communicable disease defined, 50-1-101.

Powers of Department relating to communicable diseases, 50-1-202.

Report of exposure to infectious disease, Title 50, ch. 16, part 7.

Report of exposure to infectious disease -- immunity from liability, 50-16-704.

Revocation, suspension, or cancellation of driver's license, Title 61, ch. 5, part 2.

**37-2-301. Duty to report cases of communicable disease.** (1) If a physician or other practitioner of the healing arts examines or treats a person who the physician or other practitioner believes has a communicable disease or a disease declared reportable by the department of public health and human services, the physician or other practitioner shall immediately report the case to the local health officer. The report must be in the form and contain the information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, must be paid to

the county treasurer of the county in which the violation occurs.

**History:** (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987; amd. Sec. 58, Ch. 418, L. 1995; amd. Sec. 87, Ch. 546, L. 1995.

**Cross-References**

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

**37-2-302. Gunshot or stab wounds to be reported.** The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

**History:** En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

**37-2-303. Immunity from liability.** A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

**History:** En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.

**37-2-304 through 37-2-310 reserved.**

**37-2-311. Report to department of justice by physician.** (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient.

**History:** En. Sec. 1, Ch. 126, L. 1983; amd. Sec. 1, Ch. 419, L. 1991.

**37-2-312. Physician's immunity from liability.** Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to 37-2-311 except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to 37-2-311.

**History:** En. Sec. 2, Ch. 126, L. 1983.

**37-2-313 and 37-2-314 reserved.**

**37-2-315. Direct billing for anatomic pathology services.** (1) A clinical laboratory or physician providing anatomic pathology services for a patient may



present a bill or demand for payment for services furnished by the laboratory or physician only to the following entities:

- (a) the patient;
- (b) the patient's insurer or other third-party payor;
- (c) the health care facility ordering the services;
- (d) a referring laboratory, other than a laboratory in which the patient's physician or other practitioner of the healing arts has a financial interest; or
- (e) a state or federal agency or the agent of that agency, on behalf of the patient.

(2) Except as provided in subsection (5), a physician or other practitioner of the healing arts licensed pursuant to Title 37 may not directly or indirectly bill or charge for or solicit payment for anatomic pathology services unless those services were provided personally by the physician or other practitioner or under the direct supervision of a physician providing that supervision for the purposes of 42 U.S.C. 263a.

(3) The following entities are not required to reimburse a physician for a bill or charge made in violation of this section:

- (a) a patient;
- (b) an insurer;
- (c) a health care facility; or
- (d) another third-party payor.

(4) This section does not require an assignment of benefits for anatomic pathology services.

(5) This section does not prohibit billing between laboratories, other than laboratories in which the patient's physician or other practitioner of the healing arts has a financial interest, for anatomic pathology services in instances requiring that a sample be sent to a specialist at another laboratory.

(6) This section does not prohibit a clinical laboratory or physician providing anatomic pathology services for a patient from presenting a bill or demand for payment for those services or presenting separate bills or demands for payment to a payor when allowed by this section.

(7) The licensing entity for a physician or other practitioner of the healing arts licensed pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section.

(8) As used in this section, the following definitions apply:

(a) "Anatomic pathology services" means:

(i) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;

(ii) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;

(iii) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;

(iv) subcellular pathology and molecular pathology; or

(v) blood bank services performed by a pathologist.

(b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from

the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in 50-5-101.

(d) "Insurer" includes a disability insurer, a health services corporation, a health maintenance organization, and a fraternal benefit society.

(e) "Patient" has the meaning provided in 50-16-504.

(f) "Physician" has the meaning provided in 37-3-102.

**History: En. Sec. 1, Ch. 266, L. 2005.**

## **CHAPTER 12**

### **CHIROPRACTIC**

#### **Part 1 -- General**

37-12-101. Definitions -- practice of chiropractic.

37-12-102. Exemptions -- limitations on construction of chapter.

37-12-103. Duties of chiropractic practitioners.

37-12-104. Rights and limitations governing practice.

#### **Part 2 -- Board of Chiropractors**

37-12-201. Organization of board -- powers and duties.

37-12-202. Compensation of members -- expenses.

#### **Part 3 -- Licensing**

37-12-301. Unlawful to practice without license.

37-12-302. Applications -- qualifications -- fees.

37-12-303. Repealed.

37-12-304. Examinations -- subjects.

37-12-305. Repealed.

37-12-306. Repealed.

37-12-307. Repealed.

37-12-308. Deposit of fees -- accounting.

37-12-309. Municipal license fee prohibited.

37-12-310 through 37-12-320 reserved.

37-12-321. Repealed.

37-12-322. Investigation of complaints.

37-12-323. Reconsideration of board action -- fee for restoration of license.

37-12-324. Penalty for violation.

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## Chapter Cross-References

Montana Chiropractic Legal Panel Act, Title 27, ch. 12.  
Professional service corporations, Title 35, ch. 4.  
Reporting required by health care professionals, Title 37, ch. 2, part 3.  
Duty of chiropractors to report child abuse, 41-3-201.  
Duty of chiropractor to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

## Part 1

## General

**37-12-101. Definitions -- practice of chiropractic.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of chiropractors provided for in 2-15-1737.
- (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

**History:** (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 121, Ch. 483, L. 2001.

**37-12-102. Exemptions -- limitations on construction of chapter.** This chapter may not be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of those professions. The practice of chiropractic as defined in this chapter is declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining medicine and surgery and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining osteopathy. Licensed chiropractors are not subject to the provisions of this title pertaining to the practice of osteopathy or liable to any prosecution under those provisions.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517; amd. Sec. 17, Ch. 224, L. 2003.

## Cross-References

Practice of medicine defined, 37-3-102.  
Exemptions from physician's licensing requirements, 37-3-103.

**37-12-103. Duties of chiropractic practitioners.** Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.

**37-12-104. Rights and limitations governing practice.** (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are medical doctors, osteopaths, or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

**History:** (1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509; amd. Sec. 1, Ch. 203, L. 1989.

## **Part 2 Board of Chiropractors**

### **Part Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.  
Oath defined, 1-1-201.  
Open meetings, Title 2, ch. 3, part 2.  
Power of agencies to issue subpoenas, 2-4-104.  
Adoption and publication of rules, Title 2, ch. 4, part 3.  
Public records, Title 2, ch. 6.  
Allocation of boards for administrative purposes, 2-15-121.  
Quasi-judicial boards, 2-15-124.  
Board established, 2-15-1737.  
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.  
Affidavits, Title 26, ch. 1, part 10.  
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.  
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.  
Perjury and other falsification in official matters, Title 45, ch. 7, part 2.  
Disrupting meeting as disorderly conduct, 45-8-101.

**37-12-201. Organization of board -- powers and duties.** The board shall:

(1) elect annually a president, vice president, and secretary-treasurer from its membership;

(2) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(3) make a schedule of minimum educational requirements that are without prejudice, partiality, or discrimination as to the different schools of chiropractic;

(4) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, the display of licenses, and the registration of interns and preceptors.

(5) make determinations of the qualifications of applicants under this chapter; and

(6) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503; amd. Sec. 1, Ch. 321, L. 1987; amd. Sec. 1, Ch. 161, L. 1989; amd. Sec. 2, Ch. 203, L. 1989; amd. Sec. 1, Ch. 275, L. 1993; amd. Sec. 52, Ch. 429, L. 1995; amd. Sec. 19, Ch. 492, L. 2001; amd. Sec. 51, Ch. 467, L. 2005.

**37-12-202. Compensation of members -- expenses.** The members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3); amd. Sec. 17, Ch. 474, L. 1981.

## **Part 3**

### **Licensing**

#### **Part Cross-References**

Oath defined, 1-1-201.  
Proof of execution, Title 1, ch. 5, part 3.  
Power of notary to take acknowledgments, 1-5-416.  
Oath, Title 1, ch. 6.  
Licensing to follow contested case procedure, 2-4-631.  
Affidavits, Title 26, ch. 1, part 10.  
Reporting disciplinary actions against licensees, 37-1-105.  
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.  
Licensing boards to establish fees commensurate with costs, 37-1-134.  
Licensing investigation and review -- record access, 37-1-135.  
Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.  
Licensure of criminal offenders, Title 37, ch. 1, part 2.  
Perjury, 45-7-201.  
False swearing, 45-7-202.  
Nondiscrimination in licensing, 49-3-204.

**37-12-301. Unlawful to practice without license.** It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).

**37-12-302. Applications -- qualifications -- fees.** (1) A person wishing to practice chiropractic in this state shall apply to the department on a department form. Each applicant must be a graduate of a college of chiropractic approved by the board. The applicant shall present evidence showing proof of a bachelor's degree from an accredited college or university. The application must be accompanied with copies of diplomas and certificates and satisfactory evidence of good character and reputation.

(2) The applicant shall pay to the department a license fee prescribed by the board.

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505; amd. Sec. 28, Ch. 345, L. 1981; amd. Sec. 3, Ch. 203, L. 1989; amd. Sec. 1, Ch. 168, L. 1995; amd. Sec. 18, Ch. 224, L. 2003; amd. Sec. 52, Ch. 467, L. 2005.

**37-12-303. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

**37-12-304. Examinations -- subjects.** (1) Applicants for a license to practice chiropractic must have passed an examination prescribed by the board.

(2) The board may accept the grades an applicant has received in the examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though the applicant holds a valid certificate from the national board of chiropractic examiners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506; amd. Sec. 1, Ch. 347, L. 1983; amd. Sec. 2, Ch. 275, L. 1993; amd. Sec. 19, Ch. 224, L. 2003.

**37-12-305. Repealed.** Sec. 1, Ch. 265, L. 1999.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515; amd. Sec. 29, Ch. 345, L. 1981.

**37-12-306. Repealed.** Sec. 4, Ch. 66, L. 1981.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.

**37-12-307. Repealed.** Sec. 127, Ch. 467, L. 2005.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(1); amd. Sec. 4, Ch. 155, L. 1981; amd. Sec. 30, Ch. 345, L. 1981; amd. Sec. 1, Ch. 344, L. 1983; amd. Sec. 2, Ch. 321, L. 1987; amd. Sec. 53, Ch. 429, L. 1995; amd. Sec. 19, Ch. 492, L. 1997; amd. Sec. 19, Ch. 271, L. 2003.

**37-12-308. Deposit of fees -- accounting.** (1) Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2); amd. Sec. 1, Ch. 277, L. 1983.

**37-12-309. Municipal license fee prohibited.** No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2); amd. Sec. 3, Ch. 321, L. 1987.

**37-12-310 through 37-12-320 reserved.**

**37-12-321. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1; amd. Sec. 14, Ch. 619, L. 1993.

**37-12-322. Investigation of complaints.** (1) The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition that renders the person unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or has been committed pursuant to 53-21-127 by a court of competent jurisdiction and has not later been declared competent or released from supervision;

(c) has procured the license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while the license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these must be released to the board on written request.

**History:** En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2; amd. Sec. 4, Ch. 203, L. 1989; amd. Sec. 54, Ch. 429, L. 1995; amd. Sec. 10, Ch. 490, L. 1997.

**37-12-323. Reconsideration of board action -- fee for restoration of license.** (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee prescribed by the board for the restoration.

**History:** En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3; amd. Sec. 31, Ch. 345, L. 1981.

**37-12-324. Penalty for violation.** Any person who shall practice or attempt to practice chiropractic or any person who shall buy, sell, or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that he is engaged in the practice of chiropractic without first complying with the provisions of this chapter or any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 or more than \$700 or by imprisonment in a

county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment. Prosecutions for the violation of this chapter shall be instituted in the district courts.

**History:** En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516.

## **TITLE 50**

### **HEALTH AND SAFETY CHAPTER 15**

#### **VITAL STATISTICS**

##### **Part 1 -- General Provisions**

- 50-15-101. Definitions.
- 50-15-102. Statewide system of vital statistics to be established.
- 50-15-103. Duties of department.
- 50-15-104. Appointment and supervision of local registrars.
- 50-15-105. Appointment of deputies authorized.
- 50-15-106. Registrars and deputies to report violations.
- 50-15-107. Payment of fees to local registrars.
- 50-15-108. Duty to furnish information.
- 50-15-109. Certificates.
- 50-15-110. Repealed.
- 50-15-111. Certified copy fee.
- 50-15-112. Repealed.
- 50-15-113. Repealed.
- 50-15-114. Unlawful acts and penalties.
- 50-15-115 through 50-15-120 reserved.
- 50-15-121. Copies from system of vital statistics.
- 50-15-122. Disclosure of information from vital records or vital reports -- rules.
- 50-15-123. Preservation of vital records.
- 50-15-124. Content of certificates, records, and reports.

##### **Part 2 -- Birth**

- 50-15-201. Repealed.
- 50-15-202. Unattended birth.
- 50-15-203. Child of unknown parentage.
- 50-15-204. Delayed or amended birth certificate.
- 50-15-205. Repealed.
- 50-15-206. Repealed.
- 50-15-207. New birth certificate upon proof of legitimation.
- 50-15-208. Birth registration for stillbirth -- requirements.
- 50-15-209 reserved.
- 50-15-210. Paternity acknowledgment.
- 50-15-211 through 50-15-220 reserved.
- 50-15-221. Birth registration.
- 50-15-222. Judicial birth facts procedure.



50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity.

### **Part 3 -- Marriage and Adoption**

- 50-15-301. Marriage certificates.
- 50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage.
- 50-15-303. Certificates of dissolution of marriage or declaration of invalidity of marriage.
- 50-15-304. Substitute birth certificate for person adopted.
- 50-15-305 through 50-15-310 reserved.
- 50-15-311. Certificates of adoption or annulment of adoption -- report of amended or annulled adoption decree.

### **Part 4 -- Death**

- 50-15-401. Repealed.
- 50-15-402. Copy to be forwarded to deceased's county of residence.
- 50-15-403. Preparation and filing of death or fetal death certificate.
- 50-15-404. Preparation of certificate when death not medically attended.
- 50-15-405. Authorization for removal of body from place of death.
- 50-15-406. Body brought into state for disposition.
- 50-15-407. Disinterment permit.
- 50-15-408 reserved.
- 50-15-409. List of deaths to be made by department -- copy to county clerk.
- 50-15-410 reserved.
- 50-15-411. Sudden infant death syndrome -- findings -- definition.
- 50-15-412. Cause of death -- sudden infant death syndrome.

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### **Part 1**

#### **General Provisions**

**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

- (1) "Advanced practice registered nurse" means an individual who has been certified as an advanced practice registered nurse as provided in 37-8-202.
- (2) "Authorized representative" means a person:
  - (a) designated by an individual, in a notarized written document, to have access to the individual's vital records;
  - (b) who has a general power of attorney for an individual; or
  - (c) appointed by a court to manage the personal or financial affairs of an individual.

(3) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(6) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(7) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(8) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(9) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(10) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(11) "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

(12) "Physician" means a person legally authorized to practice medicine in this state.

(13) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

(14) "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

(15) (a) "Stillbirth" means a fetal death occurring after a minimum of 20 weeks of gestation.

(b) The term does not include an abortion, as defined in 50-20-104.

(16) "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

(17) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

(18) "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports.

**History:** En. Secs. 2, 41, Ch. 197, L. 1967; amd. Secs. 28, 48, Ch. 349, L. 1974; R.C.M. 1947, 69-4102(1), (2), 69-4401; amd. Sec. 4, Ch. 228, L. 1981; amd. Sec. 1, Ch. 402, L. 1991; amd. Sec. 104, Ch. 418, L. 1995; amd. Sec. 3, Ch. 515, L. 1995; amd. Sec. 279, Ch. 546, L. 1995; amd. Sec. 2, Ch. 91, L. 2001; amd. Sec. 1, Ch. 258, L. 2001; amd. Sec. 2, Ch. 474, L. 2007.

## Compiler's Comments

*2007 Amendment:* Chapter 474 inserted definition of stillbirth; and made minor changes in style. Amendment effective January 1, 2008.

## Cross-References

Determination of death, 50-22-101.

**50-15-102. Statewide system of vital statistics to be established.** The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, amending, and preserving vital statistics and vital records.

**History:** En. Sec. 42, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4402; amd. Sec. 4, Ch. 515, L. 1995.

## Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

**50-15-103. Duties of department.** The department shall:

(1) divide the state into registration districts and change districts as necessary;

(2) promulgate rules necessary to implement this chapter;

(3) administer and enforce the provisions of this chapter and rules adopted to implement this chapter;

(4) conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

(5) prescribe, furnish, and distribute forms required by this chapter or rules adopted pursuant to this chapter or prescribe other means for the transmission of data that will accomplish complete and accurate reporting and registration; and

(6) prepare and publish reports of vital statistics of this state.

**History:** En. Sec. 43, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4403; amd. Sec. 5, Ch. 515, L. 1995.

## Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

**50-15-104. Appointment and supervision of local registrars.** The department shall:

(1) appoint local registrars;

(2) supervise local registrars and other persons required to comply with this chapter.

**History:** En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974; R.C.M. 1947, 69-4409.

**50-15-105. Appointment of deputies authorized.** With approval of the department, local registrars may appoint deputies.

**History:** En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

**50-15-106. Registrars and deputies to report violations.** Local registrars and deputies shall immediately report violations of this chapter or rules of the department to the department.

**History:** En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

**50-15-107. Payment of fees to local registrars.** (1) The department may specify by rule a fee to be paid each local registrar for each complete birth, fetal death, or death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from the county with the names of the local registrars and the amount due each.

(3) (a) The county treasurer shall pay each local registrar out of the county general fund.

(b) If the local registrar, appointed pursuant to 50-15-104, is employed by the county, the payment under subsection (3)(a) must be made to the county office in which the local registrar is employed.

**History:** En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431; amd. Sec. 1, Ch. 434, L. 2003.

**Cross-References**

Fees to be charged by County Clerk for copies, 7-4-2631.

**50-15-108. Duty to furnish information.** (1) Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

**History:** (1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435; amd. Sec. 5, Ch. 228, L. 1981.

**50-15-109. Certificates.** (1) All certificates must include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and, unless the certificate is filed electronically, retain a triplicate copy.

(3) Local registrars may not issue certified copies of certificates.

(4) Certificates filed within 1 year after the time prescribed by the department are prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to the alleged father's interests, heirs, next of kin, devisees, legatees, or other successors in interest.

**History:** En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412; amd. Sec. 1, Ch. 149, L. 2005.

**Cross-References**

Uniform Parentage Act, Title 40, ch. 6, part 1.

**50-15-110. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

**50-15-111. Certified copy fee.** (1) The department shall prescribe, by rule, a fee for:

(a) a certified copy of certificates or records;

- (b) a search of files or records when a copy is not made;
  - (c) a copy of information provided for statistical or administrative purposes as allowed by law;
  - (d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgment, or court order;
  - (e) filing a delayed registration of a vital event;
  - (f) the amendment of a vital record, after 1 year from the date of filing; and
  - (g) other services specified by this chapter or by rule.
- (2) Fees received under subsection (1) must be deposited in the state special revenue fund to be used by the department for:
- (a) the maintenance of indexes to vital records;
  - (b) the preservation of vital records; and
  - (c) the administration of the system of vital statistics.

**History:** (1)En. Sec. 47, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4407, R.C.M. 1947; (2)En. Sec. 48, Ch. 197, L. 1967; Sec. 69-4408, R.C.M. 1947; R.C.M. 1947, 69-4407(part), 69-4408; amd. Sec. 6, Ch. 228, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 587, L. 1983; amd. Sec. 6, Ch. 515, L. 1995.

#### **Cross-References**

Fund structure, Title 17, ch. 2.

#### **50-15-112. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; R.C.M. 1947, 69-4404(part); amd. Sec. 1, Ch. 178, L. 1979; amd. Sec. 1, Ch. 118, L. 1989; amd. Sec. 1, Ch. 456, L. 1989; amd. Sec. 1, Ch. 384, L. 1991.

#### **50-15-113. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Secs. 45, 47, Ch. 197, L. 1967; amd. Secs. 50, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4405, 69-4407(part).

**50-15-114. Unlawful acts and penalties.** (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than \$1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than \$25 or more than \$500, imprisoned for not more than 30 days, or both, if:

- (a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;
- (b) he refuses to provide information required by law;
- (c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

**History:** (1)En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; Sec. 69-4404, R.C.M. 1947; (2)En. Sec. 76, Ch. 197, L. 1967; Sec. 69-4436, R.C.M. 1947; (3)En. Sec. 77, Ch. 197, L. 1967; Sec. 69-4437, R.C.M. 1947; R.C.M. 1947, 69-4404(part), 69-4436, 69-4437; amd. Sec. 1, Ch. 487, L. 1989; amd. Sec. 2, Ch. 384, L. 1991.

**Cross-References**

Willfully defined, 1-1-204.

Knowingly defined, 1-1-204, 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Permit for disposition of body, 50-15-405.

**50-15-115 through 50-15-120 reserved.**

**50-15-121. Copies from system of vital statistics.** (1) Except as provided in subsections (6) and (7), the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter.

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by the department. All certified copies must contain security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection that there have been these changes to the document.

(3) Each copy issued must show the date of filing. Copies issued from amended records must be marked and must show the effective date of the amendment. Copies issued from delayed records must be marked, must include the date of filing, and must contain a statement of the evidence used to establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that the certificate is not proof of United States citizenship for the adoptive child.

(4) A certified copy or other copy of a death certificate must be issued upon request of any person.

(5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(6) This section may not be construed to permit disclosure of confidential information contained in a birth certificate for medical or health use or of information for statistical purposes only contained in a certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or research purposes or unless ordered by a court.

(7) (a) When the department receives information that a certificate may

have been registered through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending issuance of an order after an administrative contested case hearing before the department to determine whether fraud or misrepresentation has occurred.

(b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's authorized representative and provide the registrant or the representative the opportunity to be heard.

(c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue the certificate or copies of the certificate in question.

(d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and appellate procedures contained in this section.

**History:** En. Sec. 7, Ch. 515, L. 1995; amd. Sec. 1, Ch. 118, L. 1997; amd. Sec. 13, Ch. 416, L. 1999.

#### **Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Confidentiality of health care information, Title 50, ch. 16, part 5.

**50-15-122. Disclosure of information from vital records or vital reports -- rules.** (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, a person may not permit inspection of or disclose information contained in vital records or in vital reports or copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in a vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custodian of vital records to refuse disclosing information from records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the

Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) (a) Immediately upon the filing of a record with the department, the fact that a birth or death has occurred may be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121, complete birth records may be released to the public 30 years after the date of birth. The department shall adopt rules that provide for the continued safekeeping of the records.

(b) Upon the filing of a record of marriage with the clerk of the district court, information that may be released to the public without restriction is specifically limited to:

- (i) the names of the parties, the age of the parties, and their place of birth;
- (ii) the date and place of the marriage;
- (iii) the names and addresses of the parents of the parties;
- (iv) the name of the officiant; and
- (v) the type of ceremony.

(c) Any other information contained in a marriage license application that is not authorized to be disclosed under subsection (5)(b) is considered confidential and is subject to the disclosure limitations and penalties provided in 50-15-114.

(d) Notwithstanding the restrictions provided in 50-15-121 and this section, the information contained in a marriage license and marriage certificate may be released to the public 30 years after the date of the marriage.

(e) Upon the filing of a record of a dissolution of marriage with the clerk of the district court, that record may be released to the public without restriction unless designated confidential by the court. A record of dissolution of marriage designated confidential by the court may be provided to a federal, state, or local government agency upon request when the record is used solely in the conduct of the agency's official duties.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide



instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection.

**History:** En. Sec. 8, Ch. 515, L. 1995; amd. Sec. 14, Ch. 416, L. 1999; amd. Sec. 3, Ch. 91, L. 2001.

#### **Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

**50-15-123. Preservation of vital records.** To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates, vital records, or reports kept by the department. The reproductions when certified and approved by the department must be accepted as the original records. The department shall maintain original vital records intact and in their original form on file at the department.

**History:** En. Sec. 9, Ch. 515, L. 1995.

**50-15-124. Content of certificates, records, and reports.** (1) In order to promote and maintain nationwide uniformity in the system of vital statistics, the department, in the preparation of the forms of certificates, vital records, or reports required by this chapter or rules adopted under this chapter, may include the elements in forms and the forms recommended by the national center for health statistics for implementing a system of vital statistics.

(2) Each certificate, record, report, and other document required by this chapter must be prepared in a format approved by the department. All vital records must contain the date of filing.

(3) Information required in certificates, forms, records, or reports authorized by this chapter may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the department.

**History:** En. Sec. 10, Ch. 515, L. 1995.

## **Part 2**

### **Birth**

#### **Part Cross-References**

County Clerk to record births, 7-4-2613, 7-4-2619.

**50-15-201. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 53, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4413.

**50-15-202. Unattended birth.** (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered".

**History:** En. Sec. 54, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4414.

**50-15-203. Child of unknown parentage.** (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate.

(2) The report shall contain:

(a) the date and place of finding or assumption of custody;  
(b) sex, color or race, and approximate age of the child;  
(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(3) The place where the child was found or custody assumed shall be the place of birth.

(4) The date of birth shall be determined by approximation.

(5) If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

**History:** En. Sec. 55, Ch. 197, L. 1967; R.C.M. 1947, 69-4415.

**50-15-204. Delayed or amended birth certificate.** (1) (a) If a certificate of birth for a person born in this state has not been filed within 1 year of the birth, a delayed certificate of birth may be filed in accordance with rules adopted by the department. A delayed certificate of birth may not be registered until the requirements regarding facts pertaining to the delayed certificate, as specified by rule, have been met.

(b) A birth of a person in this state whose name has not been registered within 1 year after the birth must be registered on a delayed certificate of birth form. The delayed certificate must contain the date of registration and a summary statement of the information submitted to explain the delayed registration.

(c) A delayed certificate of birth may not be registered for a deceased person.

(d) The department may not register a delayed certificate of birth if an applicant for a delayed certificate of birth does not submit the minimum documentation required by rule for delayed registration or if the department has cause to question the validity or adequacy of the applicant's sworn statement or the documentation provided to establish the facts and the deficiencies are not corrected. The department shall advise the applicant of the reasons for the refusal to register the delayed certificate of birth. The department shall advise the applicant of the right to seek an order from a court of competent jurisdiction to obtain registration of the delayed certificate of birth as provided in 50-15-222.

(e) The department may, by rule, provide for the dismissal of an application for registration of a delayed certificate of birth that is not actively pursued.

(2) The department or its designee may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records.

(4) If birth certificates are altered by the department after filing, the certificate must show the date of the alteration and the mark "altered". A summary statement of the evidence in support of the alteration must be endorsed on the certificate.

(5) The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is

offered as evidence.

**History:** (1), (2)En. Sec. 56, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4416, R.C.M. 1947; (3)En. Sec. 57, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4417, R.C.M. 1947; (4)En. Sec. 59, Ch. 197, L. 1967; Sec. 69-4419, R.C.M. 1947; R.C.M. 1947, 69-4416, 69-4417, 69-4419; amd. Sec. 12, Ch. 515, L. 1995.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

Proof of contents of public record, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

**50-15-205. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 58, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4418.

**50-15-206. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 62, Ch. 197, L. 1967; R.C.M. 1947, 69-4422; amd. Sec. 2, Ch. 178, L. 1979; amd. Sec. 67, Ch. 609, L. 1987; amd. Sec. 2, Ch. 118, L. 1989.

**50-15-207. New birth certificate upon proof of legitimation.** Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption.

**History:** En. Sec. 63, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4423.

**50-15-208. (Effective January 1, 2008) Birth registration for stillbirth -- requirements.** (1) The department shall establish a certificate of birth resulting in a stillbirth on a form adopted by the department when the birth results in a stillbirth. Upon request by a parent, a certificate of birth resulting in a stillbirth must be filed in addition to the fetal death certificate provided for in 50-15-403. Upon request, a certificate of birth resulting in a stillbirth must be provided to a parent.

(2) A certificate of birth resulting in a stillbirth may be filed by:

(a) the physician, the physician's designee, or the direct-entry midwife licensed pursuant to Title 37, chapter 27, in attendance at a stillbirth;

(b) the person in attendance at a stillbirth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the stillbirth occurred; or

(e) the local registrar if 50-15-202 applies.

(3) The department shall adopt rules providing for:

(a) the time by which the certificate of birth resulting in a stillbirth must be filed after the stillbirth;

(b) the evidence required to establish the facts of a stillbirth; and

(c) the information required on a certificate of birth resulting in a stillbirth.

**History:** En. Sec. 1, Ch. 474, L. 2007.

#### **Compiler's Comments**

*Effective Date:* Section 4, Ch. 474, L. 2007, provided that this section is effective January 1, 2008.

**50-15-209 reserved.**

**50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a mother unmarried at the time of birth, the administrator or person in charge of a

hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of paternity pursuant to 40-6-105;

(b) provide written information, furnished by the department of public health and human services, describing the rights and responsibilities of paternity, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department of public health and human services shall establish the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department of public health and human services for the acknowledgment of paternity.

(4) If the child is born in this state, the department of public health and human services shall file an acknowledgment received under 40-6-105 or this section with the child's certificate of birth. If the child was not born in this state or if an acknowledgment received under 40-6-105 or this section cannot be filed with the child's certificate of birth, the department shall file the acknowledgment in an acknowledgment registry created and maintained for that purpose.

**History:** En. Sec. 2, Ch. 523, L. 1993; amd. Sec. 11, Ch. 70, L. 1995; amd. Sec. 91, Ch. 552, L. 1997.

#### **Cross-References**

Establishment of paternity -- jurisdiction and venue, 40-5-231.

Establishment of paternity -- notice of paternity determination, 40-5-232.

Establishment of paternity -- administrative hearing, 40-5-233.

Paternity blood tests, 40-5-234.

Effect of order establishing paternity, 40-5-235.

Referral of paternity issue to District Court, 40-5-236.

District Court paternity proceedings, 40-5-237.

#### **50-15-211 through 50-15-220 reserved.**

**50-15-221. Birth registration.** (1) A certificate of birth must be filed as specified in this section with the department for each live birth that occurs in this state. Unless otherwise directed by the department, the certificate must be filed within the time prescribed by the department by rule after the birth. The birth certificate must be registered if it has been completed and filed in accordance with this section and rules adopted to implement this section.

(2) If a birth occurs in a health care facility, the birth certificate must be completed and filed by the attending physician or the physician's designee.

(3) If a birth occurs in or en route to a health care facility, the person in charge of the facility or the person's authorized designee shall obtain the personal data concerning the newborn child, prepare the certificate, and certify that the child was born alive at the place, at the time, and on the date stated. Certification may be by signature or by an approved electronic process. The person referenced in this subsection shall file the certificate as directed in subsection (1). The physician or other person in attendance at the birth shall provide the medical information required by the certificate within 72 hours after the birth.

(4) The department shall, by rule, determine what evidence may be required

to establish the facts of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated by the department, the certificate must be prepared and filed by one of the following persons in the indicated order of priority in subsections (4)(a) through (4)(e):

- (a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, chapter 27, in attendance at or immediately after the birth;
- (b) a person in attendance at or immediately after the birth;
- (c) the father or the mother;
- (d) in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or
- (e) the local registrar, if 50-15-202 applies.

(5) When a birth occurs on a moving conveyance within the United States and the newborn child is first removed from the conveyance in this state, the birth must be registered in this state by a person listed in subsection (4) and the place where the child is first removed from the conveyance is considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth must be registered by a person listed in subsection (4) in this state, but the certificate must indicate the actual place of birth insofar as the place can be determined.

(6) For the purposes of birth registration, the woman who gives birth to the child is considered to be the mother, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. Information about the father must be entered as provided in subsection (7).

(7) (a) If the mother was married at the time of conception or birth or between conception and birth, the name of the husband must be entered on the certificate as the father of the child, unless:

- (i) other paternity has been determined by a court of competent jurisdiction;
- (ii) the mother and the husband execute joint or separate affidavits attesting that the husband is not the father of the child. Affidavits must be notarized, and signatures of the mother and of the husband must be individually notarized on any joint affidavit. If affidavits are filed, information about the father must be omitted from the certificate.

(iii) the mother executes an affidavit attesting that the husband is not the father and names a putative father, the putative father executes an affidavit attesting paternity, and the husband executes an affidavit denying paternity. Affidavits may be joint or individual or a combination of joint and individual affidavits. Each signature on an affidavit must be individually notarized. If all affidavits are filed, the putative father must be shown as the father on the certificate.

(b) If the mother was not married at the time of conception or birth or between conception and birth, the name of the father may not be entered on the certificate without an affidavit of paternity signed by the mother and the person to be named as the father.

(c) If paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child must be entered on the certificate of birth in accordance with the finding and order of the court.

(d) If the father is not named on the certificate of birth, information about the father may not be entered on the certificate.

(e) Affidavits required under this subsection (7) must be filed with the department.

(8) Either parent of the child, or another informant, shall verify the accuracy

of the personal data to be entered on the certificate in order to permit the filing of the certificate within the time prescribed in subsection (1).

(9) A certificate of birth filed after the time prescribed in subsection (1) but within 1 year from the date of birth must be registered by the natural parents, the adoptive parents, or the person having legal custody of the child, on the standard form of live birth certificate in the manner prescribed in this section and by rule. The certificate may not be designated as delayed. The department may require additional evidence in support of the facts of birth.

**History:** En. Sec. 11, Ch. 515, L. 1995.

#### **Cross-References**

Adoption of publication of rules, Title 2, ch. 4, part 3.

**50-15-222. Judicial birth facts procedure.** (1) If the department declines to register a certificate of birth under the provisions of 50-15-204 or 50-15-221, a petition signed and sworn to by the petitioner may be filed with the district court, seeking an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(2) The petition must be made on a form adopted or approved by the department and must allege:

(a) that the person for whom a certificate of birth is sought was born in this state;

(b) that a certificate of birth of the person cannot be found at the department or at the office of the clerk and recorder;

(c) that diligent efforts by the petitioner have failed to obtain the evidence to establish entitlement to a certificate of birth required in accordance with this chapter and rules adopted pursuant to this chapter;

(d) that the department has declined to file a certificate of birth; and

(e) other allegations as may be required by law.

(3) The petition must be accompanied by all documentary evidence that was submitted to the department in support of the applicant's registration and by a statement of the reasons why the department declined to register the certificate of birth.

(4) The district court shall fix a time and place for hearing the petition and shall give the department 30 days' notice of the hearing. The department through its authorized representative shall appear and testify as a witness in the proceeding if determined necessary by the court.

(5) If the district court finds, from the evidence presented, that the person for whom a certificate of birth is sought was born in this state, it shall make findings as to the date and place of birth, parentage, and other relevant facts and shall issue an order establishing the certificate of birth. The order must include the findings and birth data to be registered, a description of the evidence presented, and the date of the court's action.

(6) The clerk of the court shall forward the order referred to in subsection (5) to the department not later than the 10th calendar day of the month following the month in which it was entered. The order must be registered by the department and constitutes the court-ordered certificate of birth.

**History:** En. Sec. 13, Ch. 515, L. 1995.

**50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of

adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction has determined the paternity of the person and information necessary to identify the original certificate of birth is provided; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule, as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department shall direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state be forwarded immediately to the department.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person who was born in a foreign country and adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section.

**History:** En. Sec. 14, Ch. 515, L. 1995; amd. Sec. 169, Ch. 480, L. 1997; amd. Sec. 92, Ch. 552, L. 1997; amd. Sec. 2, Ch. 149, L. 2005.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

## **Part 3**

### **Marriage and Adoption**

#### **Part Cross-References**

County Clerk to maintain index of marriage certificates, 7-4-2619.

Marriage license requirements, Title 40, ch. 1, part 2.

Declaration of marriage without solemnization, 40-1-311.

Registration of marriages, 40-1-321.

Certificates of marriage and records of certificates as evidence of marriage, 40-1-322.

Proof of solemnized marriage when no record, 40-1-323.

**50-15-301. Marriage certificates.** Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed during the preceding calendar month to the department. Reports must be on forms and contain information prescribed by the department.

**History:** En. Sec. 72, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4432; amd. Sec. 7, Ch. 228, L. 1981; amd. Sec. 14, Ch. 13, Sp. L. August 2002; amd. Sec. 6, Ch. 114, L. 2005.

#### **Cross-References**

Marriage licenses, Title 40, ch. 1, part 2.

**50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage.** (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; and

(g) date of judgment and the party which was granted it.

**History:** En. Sec. 74, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4434; amd. Sec. 4, Ch. 37, L. 1979.

#### **Cross-References**



Declaration of invalidity, Title 40, ch. 1, part 4.  
Dissolution of marriage, Title 40, ch. 4, part 1.

**50-15-303. Certificates of dissolution of marriage or declaration of invalidity of marriage.** Before the 10th day of each month, the clerk of the court shall prepare and forward to the department a certificate for each decree of dissolution of marriage or declaration of invalidity of marriage that became final during the preceding calendar month. Certificates must be on forms prescribed by the department.

**History:** En. Sec. 73, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4433; amd. Sec. 5, Ch. 37, L. 1979; amd. Sec. 8, Ch. 228, L. 1981; amd. Sec. 15, Ch. 515, L. 1995.

**Cross-References**

Declaration of invalidity, Title 40, ch. 1, part 4.  
Termination of marriage, Title 40, ch. 4.

**50-15-304. Substitute birth certificate for person adopted.** (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of another state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and the sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of public health and human services" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute birth certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in their files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only as provided in 50-15-223(2).

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original birth certificate to its place in its files and notify the local registrar and county clerk and recorder.

**History:** (1)En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977; Sec. 69-4420, R.C.M. 1947; (2), (3)En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974; Sec. 69-4421, R.C.M. 1947; R.C.M. 1947, 69-4420, 69-4421; amd. Sec. 9, Ch. 228, L. 1981; amd. Sec. 105, Ch. 418, L. 1995; amd. Sec. 282, Ch. 546, L. 1995; amd. Sec. 3, Ch. 149, L. 2005.

**Cross-References**

Office of County Clerk, Title 7, ch. 4, part 26.

**50-15-305 through 50-15-310 reserved.**

**50-15-311. Certificates of adoption or annulment of adoption -- report of amended or annulled adoption decree.** (1) For each adoption decreed by a district court, the decree must require the clerk of the court to prepare a certificate of adoption on a form prescribed and furnished by the department. The certificate of adoption must include facts that are necessary to locate and identify the date and place of birth of the adopted person or, in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the district court as to the date and place of birth of the person. The certificate of adoption must also contain information necessary to establish a new certificate of birth for the person adopted and must identify the order of adoption. The clerk of the court shall certify the certificate of adoption.

(2) Information necessary for the clerk of the court to prepare the certificate of adoption must be furnished, by each petitioner for adoption on a form prescribed by the department, at the time that the petition for adoption is filed. A person or agency having knowledge of facts, as described in subsection (1), may be required by the court to supply the court with information necessary to complete the certificate of adoption. The district court may make the provision of the information for the preparation of a certificate of adoption a prerequisite to the issuance of a final decree.

(3) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report. The report must include the facts that are necessary to identify the original certificate of adoption and the facts amended in the adoption decree that are necessary to properly amend the birth record.

(4) No later than the 16th day of each calendar month or more frequently, as directed by the department, the clerk of the court shall forward to the department certificates of adoption, reports of annulment of adoption, and amendments of decrees of adoption that were entered in the preceding month, together with any related reports required by the department.

(5) When the department receives a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption for a person born outside this state, the department shall forward the certificate, report, or amendment to the state registrar or the agency charged with registering vital statistics in the state where the person was born.

(6) If the birth of an adopted child occurred in a foreign country and the adopted child was not a citizen of the United States at the time of birth, the department shall prepare a "Certificate of Foreign Birth" as required by 50-15-223. If the adopted child was born in Canada, the department shall send a copy of the certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in Canada.

(7) If the adopted child born in a foreign country was a citizen of the United States at the time of birth, the department may not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents of the procedures for obtaining a revised certificate of birth for their child through the United States department of state.

(8) A deceased person cannot be adopted.

**History: En. Sec. 16, Ch. 515, L. 1995.**

## **Part 4**

### **Death**

#### **Part Cross-References**

Office of County Coroner, Title 7, ch. 4, part 29.

**50-15-401. Repealed.** Sec. 3, Ch. 118, L. 1997.

**History:** En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(1); amd. Sec. 1, Ch. 502, L. 1989.

**50-15-402. Copy to be forwarded to deceased's county of residence.**

If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

**History:** En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(2).

**Cross-References**

Residence -- rules for determining, 1-1-215.

Office of County Clerk, Title 7, ch. 4, part 26.

**50-15-403. Preparation and filing of death or fetal death certificate.**

(1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician, the certifying advanced practice registered nurse, or the coroner having jurisdiction for medical certification of the cause of death. The medical certification must be completed by the physician, the advanced practice registered nurse, or the coroner within the timeframe established by the department by rule. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician, the advanced practice registered nurse, or the coroner and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with the local registrar in the registration area where the death occurred or, if the place of death is unknown, where the dead body was discovered.

(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.

(4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the body is first removed from the vehicle in this state, the death must be registered in this state and the place where the body is first removed is considered the place of death. When a death occurs in a moving vehicle while in international air space or in a foreign country or its air space and the body is first removed from the vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be determined, must be entered on the death certificate.

**History:** En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979; amd. Sec. 3, Ch. 287, L. 1993; amd. Sec. 17, Ch. 515, L. 1995; amd. Sec. 2, Ch. 118, L. 1997; amd. Sec. 93, Ch. 552, L. 1997; amd. Sec. 2, Ch. 27, L. 1999; amd. Sec. 2, Ch. 258, L. 2001.

**50-15-404. Preparation of certificate when death not medically attended.** (1) If the death or fetal death occurred without medical attendance or the

physician or advanced practice registered nurse last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification.

**History:** En. Sec. 66, Ch. 197, L. 1967; R.C.M. 1947, 66-4426; amd. Sec. 29, Ch. 7, L. 1979; amd. Sec. 3, Ch. 258, L. 2001.

**50-15-405. Authorization for removal of body from place of death.** (1) Except as provided in subsection (2), a dead body may be removed from the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, the advanced practice registered nurse in attendance at death, the coroner having jurisdiction, or a mortician licensed under 37-19-302.

(2) If the death requires inquiry under 46-4-122, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral authorization for cremation of the body, which must be reduced to writing as specified under subsection (1) by the coroner.

(3) The written authorization to move a dead body or, when applicable, to cremate a dead body must be made in quadruplicate on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization. A fourth copy may accompany the body to final disposition, as necessary.

(4) A written authorization issued under this section permits removal, transportation, and final disposition of a dead body.

**History:** En. Secs. 67, 68, Ch. 197, L. 1967; R.C.M. 1947, 69-4427, 69-4428; amd. Sec. 30, Ch. 7, L. 1979; amd. Sec. 4, Ch. 287, L. 1993; amd. Sec. 18, Ch. 515, L. 1995; amd. Sec. 4, Ch. 258, L. 2001.

**50-15-406. Body brought into state for disposition.** If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

**History:** En. Sec. 69, Ch. 197, L. 1967; R.C.M. 1947, 69-4429.

**50-15-407. Disinterment permit.** (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

**History:** En. Sec. 1, Ch. 481, L. 1973; amd. Sec. 19, Ch. 187, L. 1977; R.C.M. 1947, 69-4428.1.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

Human Skeletal Remains and Burial Site Protection Act, Title 22, ch. 3, part 8.

Penalty for disturbing corpses, 44-3-404.

Authority to order exhumation for autopsy, 46-4-103.

Power of County Coroner to order exhumation, 46-4-110.

**50-15-408 reserved.**

**50-15-409. List of deaths to be made by department -- copy to county clerk.** The department shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of the death, reported to it during the period and shall send a copy of the list of deaths to the county clerk of each county in the state.

**History:** En. Sec. 2, Ch. 186, L. 1935; re-en. Sec. 10400.50, R.C.M. 1935; R.C.M. 1947, 91-4458; amd. Sec. 175, Ch. 418, L. 1995; amd. Sec. 521, Ch. 546, L. 1995; Sec. 72-16-217, MCA 1999; redes. 50-15-409 by Sec. 35, Ch. 9, Sp. L. May 2000.

**50-15-410 reserved.**

**50-15-411. Sudden infant death syndrome -- findings -- definition.**

(1) As used in 50-15-412 and this section, "sudden infant death syndrome" means the sudden death of an infant under 1 year of age that remains unexplained after a thorough case investigation, including the performance of a complete autopsy, an examination of the death scene, and a review of the clinical history.

(2) The legislature recognizes that research has shown that sudden infant death syndrome is a leading cause of death among children from 1 month to 1 year of age. The legislature finds and declares that sudden infant death syndrome is a serious problem within Montana and that public interest is served by research and study of sudden infant death syndrome and its potential causes and indications.

**History:** En. Sec. 1, Ch. 351, L. 1997.

**50-15-412. Cause of death -- sudden infant death syndrome.** When the coroner's findings are consistent with sudden infant death syndrome, the coroner may state on the death certificate that sudden infant death syndrome was the cause of death.

**History:** En. Sec. 2, Ch. 351, L. 1997.

**Cross-References**

Office of County Coroner, Title 7, ch. 4, part 29.

Investigation of death -- autopsy, Title 46, ch. 4, part 1.

Cadavers and autopsies, Title 50, ch. 21, part 1.

## **TITLE 50 HEALTH AND SAFETY**

### **CHAPTER 16**

#### **HEALTH CARE INFORMATION**

##### **Part 1 -- General Provisions**

50-16-101. Public officials and corporations to furnish information on request.

50-16-102. Information on infant morbidity and mortality.

##### **Part 2 -- Professional Review Committees**

50-16-201. Definitions.

50-16-202. Committees to have access to information.

- 50-16-203. Committee health care information and proceedings confidential and privileged.
- 50-16-204. Restrictions on use or publication of information.
- 50-16-205. Data confidential -- inadmissible in judicial proceedings.

### **Part 3 -- Confidentiality of Health Care Information (Repealed)**

### **Part 4 -- Health Information Center (Repealed)**

### **Part 5 -- Uniform Health Care Information**

- 50-16-501. Short title.
- 50-16-502. Legislative findings.
- 50-16-503. Uniformity of application and construction.
- 50-16-504. Definitions.
- 50-16-505. Limit on applicability.
- 50-16-506 through 50-16-510 reserved.
- 50-16-511. Duty to adopt security safeguards.
- 50-16-512. Content and dissemination of notice.
- 50-16-513. Retention of record.
- 50-16-514 through 50-16-520 reserved.
- 50-16-521. Health care representatives.
- 50-16-522. Representative of deceased patient.
- 50-16-523 and 50-16-524 reserved.
- 50-16-525. Disclosure by health care provider.
- 50-16-526. Patient authorization to health care provider for disclosure.
- 50-16-527. Patient authorization -- retention -- effective period -- exception -- communication without prior notice for workers' compensation purposes.
- 50-16-528. Patient's revocation of authorization for disclosure.
- 50-16-529. Disclosure without patient's authorization based on need to know.
- 50-16-530. Disclosure without patient's authorization.
- 50-16-531. Immunity of health care providers pursuant to written authorization -- form required.
- 50-16-532 through 50-16-534 reserved.
- 50-16-535. When health care information available by compulsory process.
- 50-16-536. Method of compulsory process.
- 50-16-537 through 50-16-539 reserved.
- 50-16-540. Reasonable fees allowed.
- 50-16-541. Requirements and procedures for patient's examination and copying.
- 50-16-542. Denial of examination and copying.
- 50-16-543. Request for correction or amendment.
- 50-16-544. Procedure for adding correction, amendment, or statement of disagreement.
- 50-16-545. Dissemination of corrected or amended information or statement

of disagreement.

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty.

50-16-552. Civil enforcement.

50-16-553. Civil remedies.

## **Part 6 -- Government Health Care Information**

50-16-601. Short title.

50-16-602. Definitions.

50-16-603. Confidentiality of health care information.

50-16-604. Secondary release of health care information.

50-16-605. Judicial, legislative, and administrative proceedings -- testimony.

50-16-606. Correlation with Uniform Health Care Information Act.

50-16-607 through 50-16-610 reserved.

50-16-611. Penalty.

## **Part 7 -- Report of Exposure to Infectious Disease**

50-16-701. Definitions.

50-16-702. Notification of exposure to infectious disease -- report of exposure to disease.

50-16-703. Notification of precautions after exposure to infectious disease.

50-16-704. Confidentiality -- penalty for violation -- immunity from liability.

50-16-705. Rulemaking authority.

50-16-706 through 50-16-710 reserved.

50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease.

50-16-712. Notification to mortuary personnel -- exposure to infectious disease.

## **Part 8 -- Health Care Information Privacy Requirements for Providers Subject to HIPAA**

50-16-801. Legislative findings.

50-16-802. Applicability.

50-16-803. Definitions.

50-16-804. Representative of deceased patient's estate.

50-16-805. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes.

50-16-806 through 50-16-810 reserved.

50-16-811. When health care information available by compulsory process.

50-16-812. Method of compulsory process.

50-16-813 through 50-16-815 reserved.

50-16-816. Reasonable fees.

50-16-817. Civil remedies.

50-16-818. Good faith.

## **Part 9 reserved**

## Part 10 -- AIDS Education and Prevention

- 50-16-1001. Short title.
  - 50-16-1002. Statement of purpose.
  - 50-16-1003. Definitions.
  - 50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases.
  - 50-16-1005 and 50-16-1006 reserved.
  - 50-16-1007. Testing -- counseling -- informed consent -- penalty.
  - 50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty.
  - 50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure.
  - 50-16-1010 through 50-16-1012 reserved.
  - 50-16-1013. Civil remedy.
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### Chapter Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.  
Right of privacy, Art. II, sec. 10, Mont. Const.  
Duty to report cases of communicable disease, 37-2-301.  
Gunshot or stab wounds to be reported, 37-2-302.  
Immunity from liability, 37-2-303.  
Report to Department of Justice by physician, 37-2-311.  
Physician's immunity from liability, 37-2-312.

## Part 1

### General Provisions

**50-16-101. Public officials and corporations to furnish information on request.** On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of public health and human services.

**History:** En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114; amd. Sec. 107, Ch. 418, L. 1995; amd. Sec. 284, Ch. 546, L. 1995.

**50-16-102. Information on infant morbidity and mortality.** (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of public health and human services, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an inhospital staff committee.



(2) A person who furnishes information under subsection (1) is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of a person whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or the person's legal representative, is prejudicial error resulting in a mistrial.

**History:** En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115; amd. Sec. 108, Ch. 418, L. 1995; amd. Sec. 285, Ch. 546, L. 1995.

## **Part 2**

### **Professional Review Committees**

**50-16-201. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

**History:** En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304; amd. Sec. 1, Ch. 359, L. 2001; amd. Sec. 5, Ch. 396, L. 2003; amd. Sec. 124, Ch. 467, L. 2005; amd. Sec. 25, Ch. 519, L. 2005.

**50-16-202. Committees to have access to information.** It is in the interest of public health and patient medical care that health care facility committees have access to the records and other health care information relating to the condition and treatment of patients in the health care facility to study and evaluate for the

purpose of evaluating matters relating to the care and treatment of patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out these purposes, any health care facility and its agents and employees may provide medical records or other health care information relating to the condition and treatment of any patient in the health care facility to any utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of the health care facility.

**History:** En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part); amd. Sec. 2, Ch. 359, L. 2001.

**50-16-203. Committee health care information and proceedings confidential and privileged.** All records and health care information referred to in 50-16-202 are confidential and privileged to the committee and the members of the committee as though the health care facility patients were the patients of the members of the committee. All proceedings, records, and reports of committees are confidential and privileged.

**History:** En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part); amd. Sec. 3, Ch. 359, L. 2001.

#### **Cross-References**

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

**50-16-204. Restrictions on use or publication of information.** A utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility may use or publish health care information only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither a committee nor the members, agents, or employees of a committee shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of a committee, but a committee and its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and may not disclose or reveal the name of any health care facility patient.

**History:** En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302; amd. Sec. 4, Ch. 359, L. 2001.

**50-16-205. Data confidential -- inadmissible in judicial proceedings.** All data is confidential and is not discoverable or admissible in evidence in any judicial proceeding. However, this section does not affect the discoverability or admissibility in evidence of health care information that is not data as defined in 50-16-201.

**History:** En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303; amd. Sec. 5, Ch. 359, L. 2001.

#### **Cross-References**

Montana Rules of Evidence, Title 26, ch. 10.

### **Part 3**

#### **Confidentiality of Health Care Information (Repealed)**

**50-16-301. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 1, Ch. 578, L. 1979.

**50-16-302. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 2, Ch. 578, L. 1979.

**50-16-303. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 6, Ch. 578, L. 1979.

**50-16-304. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 8, Ch. 578, L. 1979.

**50-16-305. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 7, Ch. 578, L. 1979.

**50-16-306 through 50-16-310 reserved.**

**50-16-311. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 3, Ch. 578, L. 1979; amd. Sec. 1, Ch. 725, L. 1985.

**50-16-312. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 4, Ch. 578, L. 1979.

**50-16-313. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 4, Ch. 578, L. 1979.

**50-16-314. Repealed.** Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 5, Ch. 578, L. 1979.

## **Part 4**

### **Health Information Center (Repealed)**

**50-16-401. Repealed.** Sec. 1, Ch. 66, L. 1987.

History: En. Sec. 1, Ch. 628, L. 1983.

## **Part 5**

### **Uniform Health Care Information**

#### **Part Cross-References**

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

**50-16-501. Short title.** This part may be cited as the "Uniform Health Care Information Act".

History: En. Sec. 1, Ch. 632, L. 1987.

**50-16-502. Legislative findings.** The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of

fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in ensuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

(6) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., require health care providers subject to that legislation to provide significant privacy protection for health care information and the provisions of this part are no longer necessary for those health care providers; and

(7) because the provisions of HIPAA do not apply to some health care providers, it is important that these health care providers continue to adhere to this part.

**History:** En. Sec. 2, Ch. 632, L. 1987; amd. Sec. 6, Ch. 396, L. 2003.

**50-16-503. Uniformity of application and construction.** This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

**History:** En. Sec. 3, Ch. 632, L. 1987.

**50-16-504. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

- (a) statutory, regulatory, fiscal, medical, or scientific standards;
- (b) a private or public program of payments to a health care provider; or
- (c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the

identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(13) "Reasonable fee" means the charge, as provided for in 50-16-540, for duplicating, searching for, or handling recorded health care information.

**History:** En. Sec. 4, Ch. 632, L. 1987; amd. Sec. 2, Ch. 300, L. 1999; amd. Sec. 7, Ch. 396, L. 2003.

#### **Cross-References**

Government health care information -- definition of health care information, 50-16-602.

**50-16-505. Limit on applicability.** The provisions of this part apply only to a health care provider that is not subject to the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

**History:** En. Sec. 8, Ch. 396, L. 2003.

**50-16-506 through 50-16-510 reserved.**

**50-16-511. Duty to adopt security safeguards.** A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

**History:** En. Sec. 21, Ch. 632, L. 1987.

**50-16-512. Content and dissemination of notice.** (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

#### **NOTICE**

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information

about it at ....."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

**History: En. Sec. 18, Ch. 632, L. 1987.**

**50-16-513. Retention of record.** A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

**History: En. Sec. 22, Ch. 632, L. 1987.**

#### **Cross-References**

Records and reports required of health care facilities -- confidentiality, 50-5-106.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

**50-16-514 through 50-16-520 reserved.**

**50-16-521. Health care representatives.** (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

**History: En. Sec. 19, Ch. 632, L. 1987.**

**50-16-522. Representative of deceased patient.** A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him.

**History: En. Sec. 20, Ch. 632, L. 1987; amd. Sec. 1, Ch. 657, L. 1989.**

**50-16-523 and 50-16-524 reserved.**

**50-16-525. Disclosure by health care provider.** (1) Except as authorized in 50-16-529, 50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or

examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

**History:** En. Sec. 5, Ch. 632, L. 1987; amd. Sec. 2, Ch. 657, L. 1989; amd. Sec. 8, Ch. 519, L. 1997.

#### **Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.  
Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).  
Doctor-patient privilege, 26-1-805.  
Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).  
Gunshot or stab wounds -- reporting by health care practitioners, 37-2-302.  
Release of information by physician concerning minor, 41-1-403.  
Records and reports required of health care facilities -- confidentiality, 50-5-106.  
Confidentiality under Tumor Registry Act, 50-15-704.  
Unauthorized divulgence of serological test information, 50-19-108.  
Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.  
Confidentiality of records concerning mental illness, 53-21-166.  
Records of chemically dependent persons, intoxicated persons, and family members, 53-24-306.

**50-16-526. Patient authorization to health care provider for disclosure.** (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

- (a) be in writing, dated, and signed by the patient;
- (b) identify the nature of the information to be disclosed; and
- (c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

**History:** En. Sec. 6, Ch. 632, L. 1987; amd. Sec. 3, Ch. 300, L. 1999.

#### **Cross-References**

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

**50-16-527. Patient authorization -- retention -- effective period -- exception -- communication without prior notice for workers' compensation purposes.** (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this

subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise provided by law.

(5) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (4) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

**History:** En. Sec. 7, Ch. 632, L. 1987; amd. Sec. 13, Ch. 333, L. 1989; amd. Sec. 1, Ch. 480, L. 1999; amd. Sec. 5, Ch. 464, L. 2003.

**50-16-528. Patient's revocation of authorization for disclosure.** A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

**History:** En. Sec. 8, Ch. 632, L. 1987.

**50-16-529. Disclosure without patient's authorization based on need to know.** A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional



practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider;

(8) to an official of a penal or other custodial institution in which the patient is detained; and

(9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual.

**History:** En. Sec. 9, Ch. 632, L. 1987; amd. Sec. 3, Ch. 657, L. 1989; amd. Sec. 6, Ch. 544, L. 1991.

#### **Cross-References**

Duty of mental health professionals to warn of violent patients, 27-1-1102.

Nonliability for peer review, 37-2-201.

Pharmacists not liable for peer review, 37-7-1101.

Release of information by physician concerning minor, 41-1-403.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

**50-16-530. Disclosure without patient's authorization.** A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the office of victims services for information under 53-9-104(2)(b);

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536;

(7) pursuant to 50-16-712; or

(8) to the state medical examiner or a county coroner for use in determining cause of death. The information is required to be held confidential as provided by law.

**History:** En. Sec. 10, Ch. 632, L. 1987; amd. Sec. 1, Ch. 68, L. 1989; amd. Sec. 2, Ch. 396, L. 1995; amd. Sec. 1, Ch. 101, L. 2001; amd. Sec. 2, Ch. 124, L. 2001.

**50-16-531. Immunity of health care providers pursuant to written authorization -- form required.** A health care provider who discloses health care information within the possession of the provider, including health care information from another provider, is immune from any civil cause of action by the patient or the patient's heirs or successors in interest that is based upon delivery to the patient or the patient's designee of health care information concerning the patient that is contained in the health care provider's patient file if the information is disclosed in accordance with a written authorization using the following language:

"All health care information in your possession, whether generated by you or by any other source, may be released to me or to .....(named person) for .....(purpose of the disclosure). This release is subject to revocation at any time. The revocation is effective from the time it is communicated to the health care provider. If not revoked, the release terminates in accordance with 50-16-527.

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.....  
(Signature of patient)"

**History:** En. Sec. 1, Ch. 469, L. 1993.

**50-16-532 through 50-16-534 reserved.**

**50-16-535. When health care information available by compulsory process.** (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(j);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

(j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or a similar federal law.

(2) This part does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding in which disclosure is otherwise prohibited by law.

**History:** En. Sec. 11, Ch. 632, L. 1987; amd. Sec. 4, Ch. 657, L. 1989; amd. Sec. 9, Ch. 396, L. 2003; amd. Sec. 24, Ch. 504, L. 2003.

#### **Cross-References**

Government health care information -- legal proceedings, 50-16-605.

**50-16-536. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee

provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

**History:** En. Sec. 12, Ch. 632, L. 1987; amd. Sec. 5, Ch. 657, L. 1989; amd. Sec. 44, Ch. 16, L. 1991; amd. Sec. 4, Ch. 300, L. 1999; amd. Sec. 25, Ch. 504, L. 2003.

**50-16-537 through 50-16-539 reserved.**

**50-16-540. Reasonable fees allowed.** A reasonable fee for providing health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed \$15 for searching and handling recorded health care information.

**History:** En. Sec. 1, Ch. 300, L. 1999.

**50-16-541. Requirements and procedures for patient's examination and copying.** (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination, without charge, during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee for each request, not to exceed the fee provided for in 50-16-540, for providing the health care information and is not required to provide copies until the fee is paid.

**History:** En. Sec. 13, Ch. 632, L. 1987; amd. Sec. 5, Ch. 300, L. 1999.

**50-16-542. Denial of examination and copying.** (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information is data, as defined in 50-16-201, that is compiled and used solely for utilization review, peer review, medical ethics review, quality assurance, or quality improvement;

(e) the health care information might contain information protected from disclosure pursuant to 50-15-121 and 50-15-122;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian has not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the information subject to disclosure.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), the provider shall permit examination and copying of the record by the patient's spouse, adult child, or parent or guardian or by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

**History:** En. Sec. 14, Ch. 632, L. 1987; amd. Sec. 6, Ch. 657, L. 1989; amd. Sec. 19, Ch. 515, L. 1995; amd. Sec. 6, Ch. 359, L. 2001.

**50-16-543. Request for correction or amendment.** (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

**History:** En. Sec. 15, Ch. 632, L. 1987.

**50-16-544. Procedure for adding correction, amendment, or statement of disagreement.** (1) In making a correction or amendment, the health care provider shall:

- (a) add the amending information as a part of the health record; and
- (b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

- (a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

- (b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

**History:** En. Sec. 16, Ch. 632, L. 1987.

**50-16-545. Dissemination of corrected or amended information or statement of disagreement.** (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the fee provided for in 50-16-540, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

**History:** En. Sec. 17, Ch. 632, L. 1987; amd. Sec. 6, Ch. 300, L. 1999.

**50-16-546 through 50-16-550 reserved.**

**50-16-551. Criminal penalty.** (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

**History:** En. Sec. 23, Ch. 632, L. 1987.

#### **Cross-References**

Government health care information -- penalty, 50-16-611.

Unauthorized divulgence of serological test information, 50-19-108.

**50-16-552. Civil enforcement.** The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

**History:** En. Sec. 24, Ch. 632, L. 1987.

**50-16-553. Civil remedies.** (1) A person aggrieved by a violation of this

part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

**History:** En. Sec. 25, Ch. 632, L. 1987.

## **Part 6**

### **Government Health Care Information**

#### **Part Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.

**50-16-601. Short title.** This part may be cited as the "Government Health Care Information Act".

**History:** En. Sec. 1, Ch. 481, L. 1989.

**50-16-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) (a) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

**History:** En. Sec. 2, Ch. 481, L. 1989; amd. Sec. 109, Ch. 418, L. 1995; amd. Sec. 286,

**Ch. 546, L. 1995.**

**Cross-References**

Uniform health care information -- definition of health care information, 50-16-504.

**50-16-603. Confidentiality of health care information.** Health care information in the possession of the department, a local board, a local health officer, or the entity's authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202 or if the health care information is to be presented as evidence in a court proceeding involving child abuse pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part.

**History:** En. Sec. 3, Ch. 481, L. 1989; amd. Sec. 10, Ch. 391, L. 2003; amd. Sec. 26, Ch. 504, L. 2003.

**Cross-References**

Uniform health care information, Title 50, ch. 16, part 5.

**50-16-604. Secondary release of health care information.** Information released pursuant to 50-16-603 may not be released by the person or entity it is released to unless the release conforms to the requirements of 50-16-603.

**History:** En. Sec. 4, Ch. 481, L. 1989.

**50-16-605. Judicial, legislative, and administrative proceedings -- testimony.** (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7).

**History:** En. Sec. 5, Ch. 481, L. 1989; amd. Sec. 27, Ch. 504, L. 2003.

**Cross-References**

Uniform health care information -- when available by compulsory process, 50-16-535.



**50-16-606. Correlation with Uniform Health Care Information Act.**

Health care information in the possession of a local board, local health officer, or the department because a health care provider employed by any of these entities provided health care to a patient, either individually or at a public health center or other publicly owned health care facility, is subject to the Uniform Health Care Information Act and not subject to this part.

**History:** En. Sec. 1, Ch. 432, L. 1991.

**Cross-References**

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

**50-16-607 through 50-16-610 reserved.**

**50-16-611. Penalty.** A person who knowingly violates the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

**History:** En. Sec. 6, Ch. 481, L. 1989.

**Cross-References**

Uniform health care information -- criminal penalty, 50-16-551.

## **Part 7**

### **Report of Exposure to Infectious Disease**

**Part Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report cases of communicable disease, 37-2-301.

Duty to report cases of sexually transmitted diseases, 50-18-106.

**50-16-701. Definitions.** As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying an emergency services provider of exposure.

(4) "Emergency services organization" means a public or private organization that provides emergency services to the public.

(5) "Emergency services provider" means a person employed by or acting as a volunteer with an emergency services organization, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(6) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(7) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(8) "Infectious disease" means human immunodeficiency virus infection,

hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and any other disease capable of being transmitted through an exposure that has been designated by department rule.

(9) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this part and by rule.

(10) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

**History:** En. Sec. 1, Ch. 390, L. 1989; amd. Sec. 1, Ch. 476, L. 1993; amd. Sec. 110, Ch. 418, L. 1995; amd. Sec. 287, Ch. 546, L. 1995; amd. Sec. 13, Ch. 93, L. 1997; amd. Sec. 1, Ch. 146, L. 1999.

**50-16-702. Notification of exposure to infectious disease -- report of exposure to disease.** (1) (a) If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the form required by department rule to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. The designated officer shall submit the completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider. Submission of the form to the health care facility is an indication that the emergency services provider was exposed and a verification that the designated officer and the emergency services provider believe that the emergency services provider was exposed.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control and prevention, then submission of the form to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of the report of exposure from a designated officer, the health care facility shall notify the designated officer in writing whether or not a determination has been made that the patient has or does not have an infectious disease. If a determination has been made and the patient has been found:

(i) to have an infectious disease, the information required by 50-16-703 must be provided by the health care facility;

(ii) to not have an infectious disease, the date on which the patient was transported to the health care facility must be provided by the health care facility.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall, within 48 hours after the determination was made, notify the designated officer and the department of that fact. The notice to the department must include the name of the emergency services organization that transported the patient to the health care facility. The department shall, within 24 hours after receiving the notice, notify the designated officer of the emergency services provider who transported the patient.

(3) A designated officer who receives the notification from a health care facility required by 50-16-703(2) or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with an airborne infectious disease.

**History:** En. Sec. 2, Ch. 390, L. 1989; amd. Sec. 7, Ch. 544, L. 1991; amd. Sec. 2, Ch.

476, L. 1993; amd. Sec. 2, Ch. 146, L. 1999.

**50-16-703. Notification of precautions after exposure to infectious disease.** (1) After a patient is transported to a health care facility and if a physician determines that the transported patient has an infectious disease, the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made.

(2) If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702, the health care facility shall provide the notification required by subsection (3) orally within 48 hours after the time of diagnosis and in writing within 72 hours after diagnosis to the designated officer of each emergency services organization known to the health care facility to have provided emergency services to the patient prior to or during transportation to the health care facility.

(3) The notification must state the disease to which the emergency services provider was exposed, the appropriate medical precautions and treatment that the exposed person needs to take, the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility.

**History:** En. Sec. 3, Ch. 390, L. 1989; amd. Sec. 3, Ch. 476, L. 1993; amd. Sec. 3, Ch. 146, L. 1999.

**50-16-704. Confidentiality -- penalty for violation -- immunity from liability.** (1) The name of the person diagnosed as having an infectious disease may not be released to anyone, including the emergency services provider who was exposed, nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider, except as required by this part, by department rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful.

**History:** En. Sec. 5, Ch. 390, L. 1989; amd. Sec. 4, Ch. 476, L. 1993; amd. Sec. 4, Ch. 146, L. 1999.

#### **Cross-References**

Physician's immunity from liability, 37-2-312.

**50-16-705. Rulemaking authority.** The department shall adopt rules to:

- (1) define what constitutes an exposure to an infectious disease;
- (2) specify the infectious diseases subject to this part;
- (3) specify the information about an exposure that must be included in a report of exposure;
- (4) specify recommended medical precautions and treatment for each infectious disease subject to this part; and
- (5) specify recordkeeping and reporting requirements necessary to ensure compliance with the notification requirements of this part.

**History:** En. Sec. 4, Ch. 390, L. 1989; amd. Sec. 5, Ch. 476, L. 1993; amd. Sec. 5, Ch. 146, L. 1999.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**50-16-706 through 50-16-710 reserved.**

**50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease.** (1) The health care facility and the emergency services organization shall develop internal procedures for implementing the provisions of this part and department rules.

(2) The health care facility must have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of this part and the rules promulgated under this part and shall provide the names of the designated officer and the alternate to the department.

(4) The emergency services organization shall name a designated officer and an alternate and shall provide their names to the department.

**History:** En. Sec. 7, Ch. 476, L. 1993; amd. Sec. 6, Ch. 146, L. 1999.

**50-16-712. Notification to mortuary personnel -- exposure to infectious disease.** (1) A coroner, a health care facility, or a health care provider, as defined in 50-16-1003, shall disclose information regarding the status of a deceased individual with regard to an infectious disease to personnel from a mortuary licensed under Title 37, chapter 19, at the time of transfer of the dead body or as soon after transfer as possible. The information must include whether the individual had an infectious disease at the time of death and the nature of the infectious disease.

(2) The mortuary personnel who receive the information provided in subsection (1) may not disclose the information except for purposes related directly to the preparation and disposition of the dead body.

**History:** En. Sec. 1, Ch. 396, L. 1995.

## **Part 8**

### **Health Care Information Privacy Requirements for Providers Subject to HIPAA**

**50-16-801. Legislative findings.** The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., provide significant privacy protection for health care information with respect to health care providers subject to HIPAA;

(3) for health care providers subject to the health care information privacy protections of HIPAA, the applicability of the provisions of Title 50, chapter 16, part 5, relating to health care privacy is unnecessary and may result in significant

practical difficulties;

(4) it is in the best interest of the citizens of Montana to have certain requirements, with respect to the use or release of health care information by health care providers, that are more restrictive than or additional to the health care privacy protections of HIPAA.

**History: En. Sec. 15, Ch. 396, L. 2003.**

**50-16-802. Applicability.** This part applies only to health care providers subject to the health care information privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

**History: En. Sec. 16, Ch. 396, L. 2003.**

**50-16-803. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Health care" means care, services, or supplies provided by a health care provider that are related to the health of an individual. Health care includes but is not limited to the following:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to an individual's physical or mental condition; or

(b) the sale or dispensing of any drug, device, equipment, or other item in accordance with a prescription.

(2) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(3) "Health care information" means any information, whether oral or recorded in any form or medium, that:

(a) is created or received by a health care provider;

(b) relates to the past, present, or future physical or mental health or condition of an individual or to the past, present, or future payment for the provision of health care to the individual; and

(c) identifies or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(5) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(7) "Reasonable fee" means the charge, as provided for in 50-16-816, for duplicating, searching for, or handling recorded health care information.

**History: En. Sec. 17, Ch. 396, L. 2003.**

**50-16-804. Representative of deceased patient's estate.** A personal representative of a deceased patient's estate may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person.

**History: En. Sec. 18, Ch. 396, L. 2003.**

**50-16-805. Disclosure of information for workers' compensation and**

**occupational disease claims and law enforcement purposes.** (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

**History: En. Sec. 19, Ch. 396, L. 2003.**

**50-16-806 through 50-16-810 reserved.**

**50-16-811. When health care information available by compulsory process.** (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(i);

(h) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(i) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or similar federal law.

(2) This part does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

**History: En. Sec. 20, Ch. 396, L. 2003.**

**50-16-812. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-811(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-811(1)(h), the person seeking compulsory process or discovery shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least

10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-811 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-811(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-811(1)(h), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-811 identified in the certification provides an appropriate basis for the use of compulsory process or discovery. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. If access to requested health care information is denied by the health care provider, the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes that the information should be protected from disclosure.

(4) When access to health care information is denied, the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-816, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-811 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

**History: En. Sec. 21, Ch. 396, L. 2003.**

#### **50-16-813 through 50-16-815 reserved.**

**50-16-816. Reasonable fees.** Unless prohibited by federal law, a reasonable fee for providing copies of health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed \$15 for searching and handling recorded health care information.

**History: En. Sec. 22, Ch. 396, L. 2003.**

**50-16-817. Civil remedies.** (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A disciplinary or punitive action may not be taken against a health care provider or the provider's employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(4) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of

the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(5) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(6) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

(7) A health care provider who relies in good faith upon certification pursuant to 50-16-812 is considered to have received reasonable assurances and is not liable for disclosures made in reliance on that certification.

**History:** En. Sec. 23, Ch. 396, L. 2003.

**50-16-818. Good faith.** A person authorized to act as a health care representative for an individual with respect to the individual's health care information shall act in good faith to represent the best interests of the individual.

**History:** En. Sec. 24, Ch. 396, L. 2003.

## **Part 9 reserved**

## **Part 10**

### **AIDS Education and Prevention**

#### **Part Cross-References**

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.  
Uniform health care information, Title 50, ch. 16, part 5.

**50-16-1001. Short title.** This part may be cited as the "AIDS Prevention Act".

**History:** En. Sec. 1, Ch. 614, L. 1989.

**50-16-1002. Statement of purpose.** (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

**History:** En. Sec. 2, Ch. 614, L. 1989.

**50-16-1003. Definitions.** As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.



(2) "Contact" means a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state or who is licensed, certified, or otherwise authorized by the laws of another state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.

(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(11) "Local board" means a county, city, city-county, or district board of health.

(12) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(14) "Person" means an individual, corporation, organization, or other legal entity.

(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(17) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(18) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

**History:** En. Sec. 3, Ch. 614, L. 1989; amd. Sec. 1, Ch. 544, L. 1991; amd. Sec. 111, Ch. 418, L. 1995; amd. Sec. 288, Ch. 546, L. 1995; amd. Sec. 1, Ch. 197, L. 1997; amd. Sec. 2, Ch. 524, L. 1997.

**50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases.** It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable diseases, including sexually transmitted diseases, by adopting the most currently accepted public health practices with regard to testing, reporting, partner notification, and disease intervention. Nothing in this section is intended to prohibit the department from allowing testing for HIV infection to be performed and reported without identification of the subject of the test. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

**History:** En. Sec. 1, Ch. 524, L. 1997.

#### **Cross-References**

Disclosure of communicable diseases, 50-16-603.

Sexually transmitted diseases, Title 50, ch. 18.

**50-16-1005 and 50-16-1006 reserved.**

**50-16-1007. Testing -- counseling -- informed consent -- penalty.** (1) An HIV-related test may be ordered only by a health care provider and only after receiving the informed consent of:

- (a) the subject of the test;
  - (b) the subject's legal guardian;
  - (c) the subject's next of kin or significant other if:
    - (i) the subject is unconscious or otherwise mentally incapacitated;
    - (ii) there is no legal guardian;
    - (iii) there are medical indications of an HIV-related condition; and
    - (iv) the test is advisable in order to determine the proper course of treatment of the subject; or
  - (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:
    - (i) the subject is in a hospital; and
    - (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.
- (2) When a health care provider orders an HIV-related test, the provider also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test gives informed consent, the health care provider ordering the test or the provider's designee shall give pretest counseling to:

- (a) the subject;
- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
  - (i) the subject is unconscious or otherwise mentally incapacitated; and
  - (ii) there is no guardian; or
- (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:
  - (i) the subject is in the hospital; and
  - (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous

testing is available at one of the counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, after giving informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time that the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company shall obtain the informed consent in writing and ensure that:

(a) negative results can be obtained by the subject or the subject's representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or the subject's representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702 has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test

performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection (10), "informed consent" means an agreement that is freely executed, either orally or in writing, by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of \$1,000 or imprisonment for up to 6 months, or both.

**History:** En. Sec. 4, Ch. 614, L. 1989; amd. Sec. 2, Ch. 544, L. 1991; amd. Sec. 6, Ch. 476, L. 1993; amd. Sec. 3, Ch. 524, L. 1997.

**50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty.** (1) Prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both.

**History:** En. Sec. 5, Ch. 614, L. 1989; amd. Sec. 3, Ch. 544, L. 1991.

#### **Cross-References**

Uniform Anatomical Gift Act, Title 72, ch. 17.

**50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure.** (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(3) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1 year, or both.

**History:** En. Sec. 6, Ch. 614, L. 1989; amd. Sec. 4, Ch. 544, L. 1991; amd. Sec. 10, Ch. 396, L. 2003.

**50-16-1010 through 50-16-1012 reserved.**

**50-16-1013. Civil remedy.** (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of \$5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of \$20,000 or actual damages, whichever is greater;

- (c) reasonable attorney fees; and
- (d) other appropriate relief, including injunctive relief.
- (2) An action under this section must be commenced within 3 years after the cause of action accrues.
- (3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).
- (4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.
- (5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

**History:** En. Sec. 7, Ch. 614, L. 1989; amd. Sec. 5, Ch. 544, L. 1991.

**Cross-References**

Statutes of limitations, Title 27, ch. 2.  
Injunctions, Title 27, ch. 19.